

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of Cellco Partnership d/b/a Verizon	)	WT Docket No. 07-208
Wireless and Rural Cellular Corporation	)	
	)	File Nos. 0003155487, <i>et al.</i> , ITC-T/C-
For Consent To Transfer Control of Licenses,	)	20070904-00358
Authorizations, and Spectrum Manager Leases	)	
	)	
and	)	
	)	
Petitions for Declaratory Ruling that the	)	File Nos. ISP-PDR-20070928-00011, ISP-
Transaction Is Consistent with Section 310(b)(4)	)	PDR-20070928-00012
of the Communications Act	)	

**MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING**

**Adopted: July 31, 2008**

**Released: August 1, 2008**

By the Commission: Commissioner Adelstein approving in part, concurring in part and issuing a statement;  
Commissioner Copps approving in part, dissenting in part and issuing a statement.

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## I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications filed by Cellco Partnership d/b/a Verizon Wireless (“Cellco”), AirTouch Cellular (“AirTouch” and, together with Cellco, “Verizon Wireless”) and Rural Cellular Corporation (“RCC” and, together with Verizon Wireless, the “Applicants”) pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (“Communications Act”).<sup>1</sup> In these applications, the Applicants are seeking Commission approval of the transfer of control of licenses, authorizations, and spectrum manager leasing arrangements held by RCC and its subsidiaries from RCC to Verizon Wireless.<sup>2</sup> As proposed, RCC would continue to exist after closing as a wholly-owned subsidiary of

<sup>1</sup> 47 U.S.C. §§ 214, 310(d).

<sup>2</sup> For a complete list of applications involved in this transaction, *see* Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, WT (continued....)

AirTouch, which is a wholly-owned subsidiary of Cellco. RCC would continue to own the stock of its subsidiaries, and the RCC subsidiaries would continue to hold all of the licenses and spectrum leasing arrangements that they held prior to the completion of this proposed transaction.

2. These transfer of control applications pertain to licenses for the Part 22 Cellular Radiotelephone Service (“cellular”), the Part 22 Paging and Radiotelephone Service (“paging”), the Part 24 Personal Communications Service (“PCS”), the Part 101 Local Multipoint Distribution Service (“LMDS”), the Part 101 Local Television Transmission Service, and the Part 101 Common Carrier Fixed Point-to-Point Microwave Service (“microwave”), as well as international section 214 authorizations. The Applicants also have filed petitions for declaratory ruling that the public interest would be served by extending to RCC’s subsidiaries and to their wireless licenses and spectrum leasing arrangements, the foreign ownership ruling that the Commission has previously issued to Verizon Wireless under section 310(b)(4) of the Communications Act.<sup>3</sup>

3. Pursuant to sections 214(a), 310(b)(4), and 310(d) of the Communications Act,<sup>4</sup> we must determine whether the approval of these applications seeking consent to the transfer of licenses, leases, and authorizations to Verizon Wireless and the grant of the petitions for declaratory ruling would serve the public interest, convenience, and necessity. Based on the record before us, we find that the Applicants have generally met that burden, with certain conditions. Because the proposed transaction would result in the combination of overlapping mobile telephony coverage and services, we applied an initial screen to identify those markets in which there clearly is no competitive harm. The initial screen indicated that there was no competitive harm in most of the overlap markets, but identified 17 markets<sup>5</sup> in which a market-by-market competitive analysis was necessary. We then conducted a market-by-market competitive analysis to examine the potential consequences of increasing Verizon Wireless’s market share and spectrum holdings in those markets. We find that competitive harm is unlikely in most of these markets, primarily because multiple other service providers in these markets would be an effective competitive constraint on the behavior of the merged entity. With regard to six local areas, however, our case-by-case analysis indicates that competitive harms likely will result. In these areas, we impose narrowly tailored conditions that will effectively remedy the potential for these particular harms.

## II. BACKGROUND

### A. Description of Applicants

#### 1. Verizon Wireless

4. Verizon Wireless, which is incorporated in Delaware and headquartered in Basking Ridge, New Jersey, is the largest wireless company in the United States based on revenues<sup>6</sup> and the second

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Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007). File No. 0003155487 has been designated the lead application (“Application”). The other applications contain an exhibit referring to the exhibits attached to file no. 0003155487. Thus, for convenience, when referring to these applications, we only cite to the lead Application. One of the applications filed to transfer control of a spectrum manager leasing arrangement from RCC Minnesota, Inc. to Verizon Wireless has been withdrawn because the leases were terminated. *See* Application, File No. 0003163550.

<sup>3</sup> 47 U.S.C. § 310(b)(4). *See* Requests for Declaratory Ruling, File Nos. ISP-PDR-20070928-00011, ISP-PDR-20070928-00012 (“Petitions for Declaratory Ruling”).

<sup>4</sup> 47 U.S.C. §§ 214(a), 310(b)(4), 310(d).

<sup>5</sup> The markets identified by the initial screen were 17 Cellular Market Areas (“CMAs”) and 15 Component Economic Areas (“CEAs”). The 17 CMAs and 15 CEAs are listed in Appendix A. For convenience, in this Memorandum Opinion and Order we simply refer to the 17 CMAs. *See* Appendix A.

<sup>6</sup> Application, Description of Transaction, Public Interest Showing and Related Requests and Demonstration, at 2 (“Application, Public Interest Statement”); Rural Cellular, Investor Relations Press Release, Verizon Wireless to (continued....)

largest wireless company based on the number of subscribers.<sup>7</sup> For the fiscal year of 2007, Verizon Wireless had revenues of approximately \$43.9 billion.<sup>8</sup> Verizon Wireless provides wireless voice and data services and equipment sales across the United States.<sup>9</sup> As of May 30, 2008, Verizon Wireless reports that it serves approximately 67.2 million customers throughout the United States on its wireless voice and data network.<sup>10</sup> Verizon Wireless utilizes Code Division Multiple Access (“CDMA”) technology, along with 1xRTT, Evolution-Data Optimized (“EvDO”) and EvDO Revision A (“EvDO Rev. A”) technology for wireless broadband services,<sup>11</sup> operating on 800 MHz cellular and 2 GHz PCS spectrum.<sup>12</sup> Its digital network covers a total aggregate population (“POPs”) of approximately 265 million<sup>13</sup> and provides service in 49 of the top 50 markets in the United States.<sup>14</sup>

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Acquire Rural Cellular Corporation, Expand the Nation’s Most Reliable Wireless Network (July 30, 2007) (“Transaction Press Release”), *available at* [http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle\\_print&ID=1034183&highlight=](http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle_print&ID=1034183&highlight=) (last visited June 28, 2008); Verizon Communications Inc., Form 10-Q, at 1 (filed Apr. 29, 2008) (“Verizon 10-Q”)

<sup>7</sup> See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Twelfth Report*, 23 FCC Rcd 2241, 2256 Chart 1 (2008) (“*Twelfth Competition Report*”) (providing a chart of 2006 subscriber information).

<sup>8</sup> See Verizon Communications, 2007 Annual Report, at 2, 20 (“Verizon Annual Report”), *available at* [http://investor.verizon.com/financial/quarterly/pdf/07\\_annual\\_report.pdf](http://investor.verizon.com/financial/quarterly/pdf/07_annual_report.pdf) (last visited June 28, 2008); Verizon Wireless, Press Kit, at 2 (May 30, 2008) (“Verizon Wireless Press Kit”), *available at* [http://news.vzw.com/pdf/Verizon\\_Wireless\\_Press\\_Kit.pdf](http://news.vzw.com/pdf/Verizon_Wireless_Press_Kit.pdf) (last visited June 28, 2008); Verizon Wireless, About Us, Overview, <http://aboutus.vzw.com/aboutusoverview.html> (“Verizon Wireless Overview”) (last visited June 28, 2008); Verizon, Investor Relations, Business Units, Domestic Wireless, <http://investor.verizon.com/business/wireless.aspx> (“Verizon Domestic Wireless”) (last visited June 28, 2008).

<sup>9</sup> Verizon Domestic Wireless at 1; Verizon, Investor Relations, Business Units, <http://investor.verizon.com/business/index.aspx> (“Verizon Business Units”) (last visited June 28, 2008).

<sup>10</sup> See Verizon Wireless Press Kit at 2; Verizon Domestic Wireless at 1; Verizon Business Units at 1; Verizon Wireless Overview. At the time it filed the Applications seeking consent to the proposed transaction, Verizon Wireless stated that it had 62.1 million subscribers. Application, Public Interest Statement at 1; Transaction Press Release at 2.

<sup>11</sup> Verizon Wireless provided service using analog technology, but it terminated its analog AMPS cellular service on February 18, 2008. See Application, Public Interest Statement at 2 n.4 (citing [http://support.vzw.com/faqs/Wireless%20Issues/analog\\_retirement.html](http://support.vzw.com/faqs/Wireless%20Issues/analog_retirement.html) (last visited Mar. 13, 2008)).

<sup>12</sup> Application, Public Interest Statement at 2; Verizon Wireless Press Kit at 2. As of December 2007, an enhanced version of EvDO – EvDO Rev A – was available to more than 240 million POPs. Verizon, Investor Relations, Company Profile, Corporate History, Recent History, [http://investor.verizon.com/profile/history/history\\_001.aspx](http://investor.verizon.com/profile/history/history_001.aspx) (Verizon Recent History”) (last visited June 28, 2008).

<sup>13</sup> Verizon Wireless Press Kit at 3. Recently, Verizon Wireless entered into an agreement to acquire ALLTEL Corporation. See Verizon, Investor Relations, Verizon Wireless to Acquire ALLTEL; Will Expand Nation’s Most Reliable Wireless Network (June 5, 2008), *available at* <http://investor.verizon.com/print.aspx?pg=http://investor.verizon.com/news/view.aspx?NewsID=923>. The applications seeking consent to the transfer of control of licenses, spectrum manager and *de facto* transfer leasing arrangements, and authorizations from Atlantis Holdings LLC, which is the parent company of ALLTEL Corporation, to Verizon Wireless and requesting a declaratory ruling on foreign ownership have been filed and public comment has been sought. See Verizon Wireless and Atlantis Holdings LLC Seek FCC Consent to Transfer Licenses, Spectrum Manager and *De Facto* Transfer Leasing Arrangements, and Authorizations, and Request a Declaratory Ruling on Foreign Ownership, WT Docket No. 08-95, *Public Notice*, DA 08-1481 (rel. June 25, 2008); Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and (continued....)

5. Cellco, which does business under the name of Verizon Wireless, is a general partnership that is a joint venture that is ultimately owned by Verizon Communications Inc. (“Verizon”) and Vodafone Group Plc. (“Vodafone”), each through a series of intermediate companies.<sup>15</sup> Verizon and Vodafone hold a 55 and 45 percent indirect interest, respectively, in the joint venture.<sup>16</sup> Cellco’s Board of Representatives is comprised of nine members – five designated by Verizon and four by Vodafone.<sup>17</sup> Verizon holds majority control of the Board and, therefore, has affirmative control of Cellco and its subsidiaries, including AirTouch.<sup>18</sup>

6. Verizon, headquartered in New York and incorporated in Delaware, provides wireline, wireless, and broadband services to mass market, business, government and wholesale customers.<sup>19</sup> Verizon operates two network-based business units – the wireline unit, which includes Verizon Telecom and Verizon Business, and Verizon Wireless.<sup>20</sup> Verizon Telecom provides communications services, including local telephone services and nationwide long distance, broadband, video and data, and entertainment and information services over a fiber-optic network in 28 states and Washington, D.C. for consumers and small and medium size businesses.<sup>21</sup> Verizon Business provides voice, data, and Internet communications services, along with advanced communications solutions in networking, security, mobility, hosting, and IT solutions to medium and large businesses and government entities.<sup>22</sup> As of December 2007, Verizon’s wireline network included more than 41 million wireline access lines and 8.2 million broadband connections nationwide.<sup>23</sup> Verizon’s network also includes approximately 13 million miles of local inner-city and long-distance all-digital fiber-optic systems (“FiOS”).<sup>24</sup> In 2007, Verizon’s

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Petition for Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Order*, DA 08-1733 (WTB rel. July 24, 2008) (extending pleading cycle).

<sup>14</sup> Recent History at 1. Verizon Wireless does not hold PCS or cellular licenses in the state of Alaska, but serves the lower 48 contiguous states, the District of Columbia, and Hawaii. *See id.* at 1 n.3.

<sup>15</sup> Application, Public Interest Statement at 2; Cellco Partnership, FCC Form 602, Attachment – Ownership of Cellco Partnership at 1 (filed Aug. 30, 2007) (“Cellco Form 602”); Transaction Press Release at 1; Verizon Wireless, Investors, <http://news.vzw.com/investor/index.html> (last visited June 28, 2008) (stating that Verizon Wireless is not currently a reporting company under the Securities Exchange Act of 1934, does not make filings with the Securities and Exchange Commission, and does not announce earnings or other financial performance information, but instead Verizon includes information about Verizon Wireless in its earnings announcements).

<sup>16</sup> Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1; Verizon Annual Report at 26.

<sup>17</sup> Cellco Form 602, Attachment – Ownership of Cellco Partnership at 1.

<sup>18</sup> *Id.*

<sup>19</sup> Verizon, Investor Relations, Company Profile, Overview, <http://investor.verizon.com/profile/overview.aspx> (“Verizon Overview”) (last visited June 28, 2008); Verizon, Corporate History, <http://investor.verizon.com/profile/history/index.aspx> (“Verizon Corporate History”) (last visited June 28, 2008).

<sup>20</sup> Verizon Annual Report at 44; Verizon Business Units at 1.

<sup>21</sup> Verizon Annual Report at 23, 24; Verizon Communications Inc., Form 10-Q, at 21 (filed Apr. 29, 2008) (“Verizon Form 10-Q”), available at <http://www.sec.gov/Archives/edgar/data/732712/000119312508095227/d10q.htm> (last visited June 28, 2008); Recent History at 2; Verizon, Investor Relations, Business Units, Overview, <http://investor.verizon.com/business/overview.aspx> (“Verizon Business Units Overview”) (last visited June 28, 2008).

<sup>22</sup> Verizon Annual Report at 23, 24; Verizon Form 10-Q at 21; Recent History at 2; Verizon Business Units Overview.

<sup>23</sup> Verizon Recent History at 1.

<sup>24</sup> *Id.* at 1-2.

wireline operations generated approximately \$50.3 billion in gross revenues,<sup>25</sup> and Verizon, which is traded on the New York Stock Exchange,<sup>26</sup> generated consolidated operating revenues of approximately \$93.5 billion.<sup>27</sup>

7. Vodafone's headquarters are located in the United Kingdom.<sup>28</sup> Its ordinary shares are listed on the London stock exchange and its American Depositary Shares are listed on the New York Stock Exchange.<sup>29</sup> Vodafone provides mobile voice and data, paging, and internet services in 25 countries in Europe, Asia, the Middle East, and the United States through its subsidiaries, joint ventures, and other investments.<sup>30</sup> Specifically, Vodafone holds interests in 33 licensed network operators in 27 countries.<sup>31</sup> Vodafone's presence in the United States is through its indirect non-controlling interest in Cellco.<sup>32</sup> Also since 2006, Vodafone has entered into agreements for the development and marketing of services under dual brand logos with network operators in countries where it does not have an equity stake.<sup>33</sup> As of March 31, 2008, Vodafone had 260 million subscribers worldwide calculated on a proportionate basis with Vodafone's interests.<sup>34</sup>

## 2. Rural Cellular Corporation

8. RCC, incorporated in Minnesota and headquartered in Alexandria, Minnesota, is a wireless communications service provider that focuses primarily on rural markets in the United States.<sup>35</sup> RCC currently serves approximately 790,000 customers located primarily in rural areas in 15 states.<sup>36</sup> RCC has five regional territories – a Central cluster serving locations in Kansas; a Midwest cluster serving locations in Minnesota, North Dakota, South Dakota, and Wisconsin; a Northeast cluster serving areas in Massachusetts, Maine, New Hampshire, New York, and Vermont; a Northwest cluster serving locations in Washington, Idaho, and Oregon; and, a Southern cluster serving locations in Alabama and Mississippi.<sup>37</sup> RCC provides service to its customers, under the name of UNICEL,<sup>38</sup> using primarily 800

<sup>25</sup> Verizon Annual Report at 20; Verizon Business Units Overview at 1.

<sup>26</sup> Verizon Corporate History at 1; Verizon Wireless Investors at 1.

<sup>27</sup> Verizon Annual Report at 2, 5, 20; Verizon Recent History at 2; Verizon Wireless Press Kit at 2.

<sup>28</sup> See Vodafone, About Vodafone, [http://www.vodafone.com/start/investor\\_relations/vodafone\\_at\\_a\\_glance0.html](http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0.html) ("About Vodafone") (last visited June 30, 2008).

<sup>29</sup> See *id.*

<sup>30</sup> See About Vodafone; Vodafone, Fact Sheet, [http://www.vodafone.com/start/investor\\_relations/vodafone\\_at\\_a\\_glance0/fact\\_sheet.html](http://www.vodafone.com/start/investor_relations/vodafone_at_a_glance0/fact_sheet.html) (last visited June 30, 2008).

<sup>31</sup> See Vodafone, Structure and Management, [http://www.vodafone.com/start/investor\\_relations/structure\\_and\\_management.html](http://www.vodafone.com/start/investor_relations/structure_and_management.html) (last visited June 30, 2008).

<sup>32</sup> See About Vodafone; Application, Public Interest Statement at 58.

<sup>33</sup> See About Vodafone.

<sup>34</sup> See *id.*

<sup>35</sup> Rural Cellular Corporation, Form 10-K, at 1, 4 (filed Mar. 14, 2008) ("RCC 10-K").

<sup>36</sup> Rural Cellular Corporation, Form 10-Q, at 23 (filed May 12, 2008) ("RCC 10-Q"); UNICEL, About Us, Licensed Area, [http://www.unicel.com/about\\_us/investor\\_relations](http://www.unicel.com/about_us/investor_relations) ("RCC License Areas") (last visited June 28, 2008); Transaction Press Release at 1, 2; RCC 10-K at 4. At the time RCC filed its application, it reported that it served over 778,000 customers. See Application, Public Interest Statement at 3.

<sup>37</sup> Application, Public Interest Statement at 3 n.10; Transaction Press Release at 1; RCC 10-K at 4.

<sup>38</sup> RCC 10-K at 1.

MHz cellular and 1900 MHz PCS licenses and spectrum leases,<sup>39</sup> and utilizes both CDMA and Global System for Mobile Communications (“GSM”) technology.<sup>40</sup> Specifically, RCC uses CDMA2000/1XRTT technology in the Midwest and GSM/General Packet Radio Service (“GPRS”)/Enhanced Data Rates for GSM Evolution (“EDGE”) service in its other territories.<sup>41</sup> RCC’s cellular and PCS licenses collectively cover 8.6 million POPs and its network covers approximately 7.2 million POPs.<sup>42</sup> RCC also holds LMDS, microwave, and paging licenses, along with one Local Television Transmission license,<sup>43</sup> as well as several international section 214 authorizations in support of its service offerings.<sup>44</sup> RCC holds its licenses through four subsidiaries – RCC Atlantic Licenses, LLC (“RCC Atlantic”), RCC Minnesota, Inc. (“RCC Minnesota”), TLA Spectrum, LLC (“TLA Spectrum”), and Wireless Alliance, LLC (“Wireless Alliance”) (collectively, “RCC Subsidiaries”).<sup>45</sup> All of these licensee subsidiaries are wholly-owned by RCC, with the exception of Wireless Alliance.<sup>46</sup> RCC, a publicly-traded company on the NASDAQ,<sup>47</sup> had total revenues of \$635.3 million in 2007.<sup>48</sup>

## B. Description of Transaction

9. On July 29, 2007, RCC, Cellco, and AirTouch entered into an Agreement and Plan of Merger (“Merger Agreement”).<sup>49</sup> Pursuant to this Merger Agreement, Rhino Merger Sub Corporation (“Merger Sub”),<sup>50</sup> a newly formed, wholly-owned subsidiary of AirTouch, will merge with and into RCC, with RCC continuing as the surviving corporation.<sup>51</sup> After consummation of the proposed transaction, RCC

<sup>39</sup> See Application, Public Interest Statement at 3-4; RCC License Areas; RCC 10-K at 5.

<sup>40</sup> RCC 10-K at 12; RCC 10-Q at 23.

<sup>41</sup> RCC 10-K at 12.

<sup>42</sup> RCC 10-Q at 23; Application, Public Interest Statement at 4.

<sup>43</sup> RCC’s paging business currently serves over 2,460 customers. The Applicants have indicated, however, that RCC plans to terminate this business. Application, Public Interest Statement at 4 n.11.

<sup>44</sup> Application, Public Interest Statement at 3-4.

<sup>45</sup> *Id.* at 4. RCC previously operated a separate retail long distance business under the name RCC Atlantic Long Distance, LLC. In mid-2005, with FCC consent, the company sold the long distance assets and terminated all operations associated with that business. While the entity appears on older RCC FCC Form 602 filings, it was merged with and into RCC and no longer exists. *Id.* at 4 n.12.

<sup>46</sup> *Id.* at 4. Wireless Alliance is 70 percent owned and controlled by RCC, with the remaining 30 percent owned by T-Mobile USA, Inc. (“T-Mobile”). Wireless Alliance holds two PCS licenses (WPOH983 and WPOH998), both of which are partitioned, disaggregated B Block spectrum in the Minneapolis, MN MTA (MTA012). Wireless Alliance’s current ownership is described in ULS Ownership Disclosure File Nos. 0002940661 (T-Mobile USA, Inc.) and 0002856474 (RCC Mn., Inc.). *Id.* at 4 n.13.

<sup>47</sup> UNICEL, About Us, Corporate Profile, [http://www.unicel.com/about\\_us/investor\\_relations](http://www.unicel.com/about_us/investor_relations) (last visited June 28, 2008); Rural Cellular – Investor Relations Press Release, Rural Cellular Corporation Shareholders Approve Merger Agreement with Verizon Wireless (Oct. 4, 2007) (“RCC Shareholder Approval Press Release”), available at [http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle\\_print&ID=1059238&highlight=](http://phx.corporate-ir.net/phoenix.zhtml?c=85091&p=irol-newsArticle_print&ID=1059238&highlight=) (last visited June 30, 2008); Transaction Press Release at 2.

<sup>48</sup> RCC 10-K at 42.

<sup>49</sup> Application, Public Interest Statement at 4.

<sup>50</sup> Merger Sub was formed on July 30, 2007 and, on July 31, 2007, Merger Sub executed and became a party to the Merger Agreement. *Id.* at 5 n.15.

<sup>51</sup> *Id.* at 4-5.

will be a wholly-owned subsidiary of AirTouch and a wholly-owned indirect subsidiary of Celco.<sup>52</sup> Thus, all licenses, leases, and authorizations currently controlled by RCC and its subsidiaries will be controlled by Verizon Wireless.<sup>53</sup>

10. As proposed, Verizon Wireless will acquire RCC for approximately \$2.67 billion in cash and assumed debt.<sup>54</sup> Upon consummation of the transaction, each issued and outstanding share of Class A and Class B common stock of RCC will be canceled and converted into the right to receive \$45.00 in cash, without interest.<sup>55</sup> Each outstanding option to acquire RCC's common stock will be cancelled in exchange for an amount equal to the product of: \$45.00 minus the exercise price of each option and the number of shares underlying the option.<sup>56</sup> Further, at consummation, each share of common stock of Merger Sub will be converted into one share of common stock in the surviving corporation, RCC,<sup>57</sup> which will, in turn, make RCC a subsidiary of AirTouch.

11. The Applicants state that the proposed transaction will enhance Verizon Wireless's network coverage in markets adjacent to its existing service areas.<sup>58</sup> The proposed transaction would "increase Verizon Wireless's coverage by approximately 4.7 million licensed POPs . . . , and increase its customer base by more than 700,000."<sup>59</sup> Verizon Wireless expects to deploy CDMA service in RCC's existing GSM markets and convert the GSM customers to CDMA service.<sup>60</sup> However, it plans to maintain RCC's existing GSM networks to provide roaming services to other GSM providers' customers.<sup>61</sup>

### C. Application Review Process

#### 1. Commission Review Process

12. Between September 4, 2007 and September 19, 2007, pursuant to section 310(d) of the Communications Act,<sup>62</sup> the Applicants filed applications seeking consent to the proposed transfer of control of licenses and spectrum manager leases held by RCC Subsidiaries from RCC to Verizon Wireless.<sup>63</sup> The Applicants also filed an application, pursuant to section 214 of the Communications Act,<sup>64</sup> seeking consent to the transfer of control of RCC's international section 214 authorizations to

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<sup>52</sup> *Id.* at 5.

<sup>53</sup> *Id.* at 6.

<sup>54</sup> RCC Shareholder Approval Press Release at 1; Transaction Press Release at 1; Verizon Annual Report at 33; Verizon Form 10-Q at 7, 28. The total value of the proposed transaction – \$2.67 billion – includes the total equity price of \$757 million on a fully-diluted basis and RCC's net debt. *See* Transaction Press Release at 1; Verizon Annual Report at 33; Verizon Form 10-Q at 7, 28.

<sup>55</sup> Application, Public Interest Statement at 6; Rural Cellular Corporation, Form 8-K, at 1 (filed July 30, 2007) ("RCC Form 8-K") (containing the Merger Agreement as an exhibit), *available at* <http://www.sec.gov/Archives/edgar/data/869561/000134100407002211/0001341004-07-002211.txt>.

<sup>56</sup> Application, Public Interest Statement at 6; RCC Form 8-K at 1.

<sup>57</sup> RCC Form 8-K at 6.

<sup>58</sup> Transaction Press Release at 1; Application, Public Interest Statement at 8.

<sup>59</sup> Transaction Press Release at 1.

<sup>60</sup> Transaction Press Release at 1; Application, Public Interest Statement at 13, 23.

<sup>61</sup> Transaction Press Release at 1; Application, Public Interest Statement at 23.

<sup>62</sup> 47 U.S.C. § 310(d).

<sup>63</sup> *See* discussion of applications filed *supra* note 2.

<sup>64</sup> 47 U.S.C. § 214.

Verizon Wireless,<sup>65</sup> and two petitions seeking declaratory rulings that it is in the public interest for RCC's subsidiaries to have indirect foreign ownership in excess of the 25 percent benchmark under section 310(b)(4) of the Communications Act.<sup>66</sup> On October 11, 2007, the Commission released a Public Notice seeking comment on the proposed transaction.<sup>67</sup> The Public Notice established a pleading cycle for the applications and petitions for declaratory ruling, with petitions to deny due November 13, 2007, oppositions due November 23, 2007, and replies due November 30, 2007.

13. *Petitions and Comments Received in Response to Public Notice.* Following release of the Public Notice, the Commission received one petition to deny, filed by the Vermont Department of Public Service ("VDPS"), requesting that the Commission either conditionally approve the Application or deny it in its entirety.<sup>68</sup> The Commission also received a letter from Senator Bernard Sanders expressing concerns about the impact that the proposed transaction will have on wireless coverage in Vermont and proposing that Verizon Wireless be permitted to complete the acquisition of RCC subject to conditions.<sup>69</sup> Additionally, the Commission received two comments expressing concern about the effects of the proposed transaction on the ability to get service in Vermont.<sup>70</sup>

14. The Commission also received a letter filed by the Department of Homeland Security ("DHS"), with the concurrence of the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), requesting that the Commission defer action on the RCC applications to allow them an opportunity to complete their review for any national security, law enforcement, and public safety issues.<sup>71</sup> Following their review, on April 2, 2008, DHS and DOJ filed a Petition to Adopt Conditions to Authorizations and Licenses with respect to the RCC applications.<sup>72</sup>

15. *Requests to Extend Deadline for Filing Petitions to Deny.* The Commission received two requests to extend the deadline for filing a petition to deny – a motion for extension of time from Vermont Public Interest Research Group ("Vermont PIRG")<sup>73</sup> and a letter from Senator Bernard Sanders.<sup>74</sup> Both

<sup>65</sup> See File No. ITC-T/C-20070904-00358.

<sup>66</sup> 47 U.S.C. § 310(b)(4). See File Nos. ISP-PDR-20070928-00011, ISP-PDR-20070928-00012.

<sup>67</sup> See Verizon Wireless and Rural Cellular Corporation Seek FCC Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, WT Docket No. 07-208, *Public Notice*, 22 FCC Rcd 18356 (2007) ("Public Notice").

<sup>68</sup> Petition to Condition Approval or Deny of the Vermont Department of Public Service, WT Docket No. 07-208 (filed Nov. 13, 2007) ("VDPS Petition to Deny").

<sup>69</sup> Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Oct. 29, 2007) ("Senator Sanders Oct. 29, 2007 Letter"). In addition, by email dated November 16, 2007, Senator Sanders transmitted to Chairman Martin two editorials from Vermont newspapers reiterating many of the concerns raised in the Senator Sanders Oct. 29, 2007 Letter. Email from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Nov. 16, 2007), enclosing November 7, 2007 editorial from The Burlington Free Press and November 11, 2007 editorial from The Valley News.

<sup>70</sup> Comment of Lake Champlain Regional Chamber of Commerce, WT Docket No. 07-28 (filed Nov. 8, 2007); Comment of Vermont League of Cities and Towns, WT Docket No. 07-208 (filed Nov. 13, 2007).

<sup>71</sup> Letter from Gregory Pinto, Director, Regulatory Policy, United States Department of Homeland Security, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 9, 2007).

<sup>72</sup> See *infra* Section VIII.

<sup>73</sup> Motion for Extension of Time of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 9, 2007) ("Vermont PIRG Extension Motion").

<sup>74</sup> See Senator Sanders Oct. 29, 2007 Letter.

Vermont PIRG and Senator Sanders requested an additional 90 days for the filing of petitions to deny to allow sufficient analysis of the proposed transaction and time for petitions and comments to be filed by interested parties.<sup>75</sup> On November 13, 2007, the Applicants filed an opposition to the Vermont PIRG Extension Motion arguing that an extension was not justified and would delay the benefits to the public associated with the proposed transaction.<sup>76</sup>

16. The Wireless Telecommunications Bureau (“Bureau”), on November 13, 2007, granted Vermont PIRG’s motion for extension of time.<sup>77</sup> The Bureau found that the justification offered by Vermont PIRG for a 90-day extension of the filing periods was warranted and granted the requested relief.<sup>78</sup> The Bureau further stated that the opposition filed by the Applicants did not provide sufficient basis for rejecting Vermont PIRG’s justification.<sup>79</sup> Accordingly, the revised date for petitions to deny was changed to February 11, 2008, oppositions were due February 21, 2008, and replies were due February 28, 2008.<sup>80</sup>

17. In response to the Bureau’s 90-day extension of the deadline for filing petitions to deny, the Applicants filed a petition for reconsideration, on November 16, 2007.<sup>81</sup> Both Vermont PIRG and VDPS opposed the Applicants’ petition for reconsideration, arguing that their request was broader than competitive concerns in Vermont.<sup>82</sup> Senator Sanders, in a letter to Chairman Martin dated November 20, 2007, also opposed the Applicants’ petition for reconsideration, asserting that the scope of Applicants’ commitment to divest certain GSM assets was unclear and would not, in any event, address all of the concerns previously raised by the Senator.<sup>83</sup> The Applicants filed a reply to the oppositions on December 3, 2007, arguing that there was no basis for granting an extension of time.<sup>84</sup> Subsequently, on December

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<sup>75</sup> Vermont PIRG Extension Motion at 1; Senator Sanders Oct. 29, 2007 Letter at 1. By letter submitted in the docket on November 5, 2007, the Chairman wrote Senator Sanders that, as of the date of the letter, no parties had yet asked the Commission to extend the petition to deny deadline. Letter from Kevin J. Martin, Chairman, Federal Communications Commission, to The Honorable Bernard Sanders, United States Senate (submitted Nov. 5, 2007). Chairman Martin’s letter further stated the Commission would give careful consideration to any request for extension that it received. *Id.* Finally, the Chairman advised Senator Sanders that the issues raised by the Senator’s letter would be considered as part of the Commission’s review of the proposed Verizon Wireless-RCC transaction. *Id.*

<sup>76</sup> Opposition of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation to Motion for Extension of Time of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 13, 2007) (“Verizon Wireless/RCC Opposition to Extension Motion”).

<sup>77</sup> Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208, *Order*, 22 FCC Rcd 19799 (WTB 2007) (“Comment Extension Order”).

<sup>78</sup> *See id.* at 19801 ¶ 6.

<sup>79</sup> *See id.*

<sup>80</sup> *See id.* at 19801 ¶¶ 6, 7.

<sup>81</sup> Petition for Reconsideration of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation to Grant of Extension of Time, WT Docket No. 07-208 (filed Nov. 16, 2007) (“Verizon/RCC Petition for Reconsideration”).

<sup>82</sup> Opposition to Petition for Reconsideration of Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Nov. 26, 2007) (“Vermont PIRG Reconsideration Opposition”); Comments of the Vermont Department of Public Service, WT Docket No. 07-208, DA 07-4192 (filed Nov. 26, 2007) (“VDPS Reconsideration Comments”).

<sup>83</sup> Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Nov. 20, 2007) (“Senator Sanders Nov. 20, 2007 Letter”).

<sup>84</sup> Reply to Opposition to Petition for Reconsideration of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation, WT Docket No. 07-208 (filed Dec. 3, 2007) (“Verizon Wireless/RCC Reconsideration Reply”).

5, 2007, the Applicants filed an *ex parte* notification, arguing that the extension of time was no longer necessary since they had reached an agreement to sell to AT&T Inc. (“AT&T”) RCC’s overlapping cellular assets in Vermont.<sup>85</sup> On December 12, 2007, Vermont PIRG filed an opposition to the Applicants’ *ex parte* notification stating that the Applicants have failed to show that the sale of RCC’s overlapping cellular assets will address the issues raised by Vermont PIRG and others.<sup>86</sup>

18. *Subsequently Filed Petitions and Comments.* On February 11, 2008, a petition to deny the proposed transaction was filed by the Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont PIRG (“Joint Petitioners”).<sup>87</sup> Joint Petitioners state that the transaction, as proposed, would have anticompetitive and anti-consumer effects in several areas, most of which are rural. VDPS also filed supplementary comments in support of its previously filed petition to deny, restating that, absent conditions to preserve and protect the GSM network in the State of Vermont, the Application should be denied.<sup>88</sup> The Commission also received numerous brief comments, including e-mail comments, from individuals raising concerns about the transaction’s impact, primarily in Vermont but elsewhere as well.<sup>89</sup>

19. On February 21, 2008, the Applicants responded to the two petitions to deny and associated comments.<sup>90</sup> The Joint Petitioners replied, on February 28, 2008, to the Applicants’ filing in opposition,

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<sup>85</sup> Letter from John T. Scott, III, Vice President & Deputy General Counsel Regulatory Law, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208 (filed Dec. 5, 2007) (“Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing”).

<sup>86</sup> Letter from Larry A. Blosser, Vermont Public Interest Research Group, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208 (filed Dec. 12, 2007) (“Vermont PIRG Dec. 12, 2007 *Ex Parte* Filing”).

<sup>87</sup> Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Feb. 11, 2008) (“Joint Petitioners Petition to Deny”).

<sup>88</sup> Supplement to Petition to Condition Approval or Deny of the Vermont Department of Public Service, WT Docket No. 07-208 (filed Feb. 11, 2008) (“VDPS Supplement to Petition to Deny”).

<sup>89</sup> Brief and e-mail comments were filed by 44 people or entities, most of whom voiced concerns about the proposed transaction. The vast majority of these commenters are residents of Vermont, although residents of Maine, New York, North Dakota, Kentucky, and Washington also filed comments. Some of the concerns raised by these comments include: loss of coverage; loss of automatic roaming at reasonable rates; transition to new service plans and/or handsets, potentially at a higher cost; replacement of GSM service by CDMA service; concerns about less competition, higher costs, and/or degraded service due to monopoly presence; and concerns about Verizon and/or Verizon Wireless customer service.

<sup>90</sup> See Opposition to Petitions to Deny and Comments of Rural Cellular Corporation and Cellco Partnership d/b/a Verizon Wireless, WT Docket No. 07-208 (filed Feb. 21, 2008) (“Verizon Wireless/RCC Opposition”). Attached to this filing were copies of four letters from members of the U.S. Senate and the U.S. House of Representatives urging that no additional time beyond the 90-day extension be afforded in this proceeding. See Letter from Cliff Stearns, U.S. Representative, Terry Everett, U.S. Representative, and Fred Upton, U.S. Representative, to Chairman Kevin Martin, Federal Communications Commission (dated Feb. 12, 2008); Letter from Senator Richard Shelby and Senator Jeff Sessions to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 7, 2008); Letter from Pat Roberts, United States Senator, Sam Brownback, United States Senator, and Jerry Moran, United States Congressman, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Feb. 7, 2008); and Letter from Tim Johnson, United States Senator, John Thune, United States Senator, and Stephanie Herseth Sandlin, United States Representative, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated Jan. 30, 2008).

continuing to urge the Commission to deny the Application or to grant approval only if certain conditions are also imposed.<sup>91</sup>

20. On March 18, 2008, the Bureau released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data related to wireless telecommunications carriers would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.<sup>92</sup> The Bureau received no requests to review the NRUF and LNP data that is in the record.

21. On July 25, 2008, Senator Sander filed a letter expressing his continued concerns with Verizon Wireless’s proposed acquisition of RCC.<sup>93</sup> He requests either that the Commission withhold approval of the proposed transaction so that it may be considered with the transfer of control of various Commission authorizations held by ALLTEL Corporation to Verizon Wireless,<sup>94</sup> or that the Commission condition any approval on both Verizon Wireless and AT&T committing to “provide service to the large number of rural residents in Vermont and in other states who currently have unreliable or no service at all.”<sup>95</sup>

22. *Related Spectrum Swap Applications.* In February and March 2008, Verizon Wireless and AT&T filed applications to exchange certain wireless licenses, spectrum manager leasing arrangements, and related authorizations in parts of Arizona, Kentucky, Nevada, New York, Ohio, Pennsylvania, Vermont, and Washington.<sup>96</sup> As part of this proposed exchange, Verizon Wireless would transfer to AT&T some licenses that it is receiving from RCC, including some markets in Vermont. Although the Bureau placed this proposed exchange of licenses between Verizon Wireless and AT&T in the same docket established for the instant Verizon-RCC transaction (WT Docket No. 07-208), we are not deciding on the proposed exchange at this time and instead will consider it separately at a later time.

23. *Spectrum Leasing Applications.* On July 31, 2008, the Applicants and W. Stephen Cannon (“Management Trustee”) submitted via the Commission’s Universal Licensing System (“ULS”) three short-term *de facto* transfer spectrum leasing applications in order to effectuate the divestiture of six

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<sup>91</sup> Reply to Opposition to Petition to Deny of Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont Public Interest Research Group, WT Docket No. 07-208 (filed Feb. 28, 2008) (“Joint Petitioners Reply”).

<sup>92</sup> Applications of Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Spectrum Manager Leases, and Authorizations, Numbering Resource Utilization and Forecast (NRUF) Reports and Local Number Portability Reports Placed into the Record, Subject to Protective Order, WT Docket No. 07-208, CC Docket No. 99-200, *Public Notice*, 23 FCC Rcd 4539 (2008); Applications of Celco Partnership b/b/a Verizon Wireless and Rural Cellular Corporation For Consent to Transfer Control of Licenses, Spectrum Manager Leases and Authorizations, WT Docket No. 07-208, CC Docket No. 99-200, *Protective Order*, 23 FCC Rcd 4542 (2008).

<sup>93</sup> Letter from Bernard Sanders, United States Senator, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission (dated July 25, 2008) (“Senator Sanders July 25, 2008 Letter”).

<sup>94</sup> *Id.* at 1, 2.

<sup>95</sup> *Id.* at 1, 3-4.

<sup>96</sup> See AT&T Inc. and Verizon Wireless Seek FCC Consent to Assign and Transfer Control of Licenses, Spectrum Leasing Arrangements, and Related Authorizations, WT Docket No. 07-208, *Public Notice*, 23 FCC Rcd 5841 (2008).

CMAs as discussed below.<sup>97</sup> In addition, the Applicants and W. Stephen Cannon, in cooperation with third-party licensees, filed two applications for short-term spectrum manager subleasing arrangements.<sup>98</sup>

## 2. Department of Justice Review

24. The Antitrust Division of DOJ reviews telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.<sup>99</sup> The Antitrust Division's review is limited solely to an examination of the competitive effects of the acquisition, without reference to national security, law enforcement, or other public interest considerations. The Antitrust Division reviewed the proposed merger between Verizon Wireless and RCC. As a result of its analysis, DOJ concluded that the proposed merger was likely to result in competitive harm in certain markets, and entered into a settlement with the Applicants designed to address its competitive concerns.<sup>100</sup> On June 10, 2008, DOJ filed a Complaint and Preservation of Assets Stipulation and Order with the United States District Court for the District of Columbia ("District Court"),<sup>101</sup> and the parties jointly filed a proposed Final Judgment with the District Court.<sup>102</sup> DOJ will allow the merger to proceed subject to the Applicants' divestiture of business units in six markets.<sup>103</sup>

25. Specifically, under the terms of the settlement between the Applicants and DOJ, Verizon Wireless and RCC have agreed to transfer control of certain cellular licenses and related operational and network assets (including certain employees, retail sites, and subscribers) in the Burlington, VT MSA (CMA248), New York RSA 2 (CMA560), Vermont RSA 1 (CMA679), Vermont RSA 2 (CMA680), Washington RSA 2 (CMA694), and Washington RSA 3 (CMA695).<sup>104</sup> These assets will be transferred to a court-appointed management trustee ("Management Trustee"), who will manage them while Verizon seeks a third-party buyer.<sup>105</sup> The buyer must be someone who, in DOJ's sole judgment, has the intent and capability of being an effective competitor to Verizon Wireless.<sup>106</sup> Verizon Wireless has a period of 120 days from consummation of the transaction (which can be extended for up to 60 days) to sell the assets to

<sup>97</sup> FCC Form 608, RCC Atlantic Licenses, LLC and W. Stephen Cannon, ULS File No. 0003521488 (filed July 31, 2008); FCC Form 608, RCC Minnesota, Inc. and W. Stephen Cannon, ULS File No. 0003521491 (filed July 31, 2008); FCC Form 608, RCC Minnesota, Inc. and W. Stephen Cannon, ULS File No. 0003521495 (filed July 31, 2008).

<sup>98</sup> These applications were filed on August 1, 2008, on paper, in the Commission's Gettysburg offices.

<sup>99</sup> 15 U.S.C. § 18. DOJ does not review mergers below certain statutorily mandated dollar thresholds, which are currently approximately \$63 million (where certain other factors are present) and \$252 million. 15 U.S.C. § 18a.

<sup>100</sup> See generally *United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation*, Complaint, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Complaint"); *United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation*, Competitive Impact Statement, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Competitive Impact Statement"). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/verizon2.htm>.

<sup>101</sup> See DOJ Complaint; *United States of America and State of Vermont v. Verizon Communications Inc. and Rural Cellular Corporation*, Preservation of Assets Stipulation and Order, Case No. 1:08-cv-00993 (entered June 10, 2008) ("DOJ Stipulation").

<sup>102</sup> *United States of America and State of Vermont v. Verizon Communications and Rural Cellular Corporation*, Proposed Final Judgment, Case No. 1:08-cv-00993 (filed June 10, 2008) ("DOJ Proposed Final Judgment").

<sup>103</sup> See DOJ Complaint at 7; DOJ Proposed Final Judgment at 3-6, 7-11.

<sup>104</sup> See DOJ Proposed Final Judgment at 3-6, 7-11; DOJ Competitive Impact Statement at 7, 10-13.

<sup>105</sup> See DOJ Stipulation at 8-13.

<sup>106</sup> DOJ Proposed Final Judgment at 10-11.

a third-party buyer or divest the assets to a divestiture trustee (“Divestiture Trustee”), who will both manage and market the assets for sale to a third party.<sup>107</sup>

### III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

26. Pursuant to sections 214(a) and 310(d) of the Communications Act, we must determine whether the Applicants have demonstrated that the proposed transfers of control of licenses and authorizations will serve the public interest, convenience, and necessity.<sup>108</sup> In making this assessment, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act,<sup>109</sup> other applicable statutes, and the Commission’s rules.<sup>110</sup> If the transaction does

<sup>107</sup> See *id.* at 7-8.

<sup>108</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>109</sup> Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., Applications of T-Mobile USA, Inc. and SunCom Wireless Holdings, Inc. For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-237, *Memorandum Opinion and Order*, 23 FCC Rcd 2515, 2519 ¶ 9 (2008) (“*T-Mobile-SunCom Order*”); Application of Aloha Spectrum Holdings Company LLC (Assignor) and AT&T Mobility II LLC (Assignee) Seeking FCC Consent For Assignment of Licenses and Authorizations, WT Docket No. 07-265, *Memorandum Opinion and Order*, 23 FCC Rcd 2234, 2236 ¶ 7 (2008) (“*AT&T-Aloha Order*”); Applications of AT&T Inc. and Dobson Communications Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, *Memorandum Opinion and Order*, 22 FCC Rcd 20295, 20301 ¶ 10 (2007) (“*AT&T-Dobson Order*”); Applications of ALLTEL Corporation, Transferor, and Atlantis Holdings LLC, Transferee, For Consent To Transfer Control of Licenses, Leases and Authorizations, WT Docket No. 07-128, *Memorandum Opinion and Order*, 22 FCC Rcd 19517, 19519-20 ¶ 7 (2007) (“*ALLTEL-Atlantis Order*”); AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, 22 FCC Rcd 5662, 5672 ¶ 17 (2007) (“*AT&T-BellSouth Order*”); Applications for the Assignment of License from Denali PCS, L.L.C to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C to General Communications, Inc., WT Docket No. 05-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14871 ¶ 15 (2006) (“*GCI-Alaska DigiTel Order*”); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-76, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13588 ¶ 13 (2006) (“*DoCoMo-Guam Order*”); Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11535 ¶ 16 (2006) (“*ALLTEL-Midwest Wireless Order*”); Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) (“*Sprint Nextel-Nextel Partners Order*”); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) (“*SBC-AT&T Order*”); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) (“*Verizon-MCI Order*”); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) (“*Sprint-Nextel Order*”); Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053, 13062 ¶ 17 (2005) (“*ALLTEL-Western Wireless Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (“*Cingular-AT&T Wireless Order*”).

<sup>110</sup> See, e.g., *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19519-20 ¶ 7; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13588-89 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.<sup>111</sup> We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.<sup>112</sup> The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.<sup>113</sup> If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing under section 309(e) of the Communications Act.<sup>114</sup>

27. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”<sup>115</sup> Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules.<sup>116</sup> In making this determination, the Commission

<sup>111</sup> See, e.g., *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20.

<sup>112</sup> See, e.g., *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

<sup>113</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14871-72 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

<sup>114</sup> 47 U.S.C. § 309(e). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 10; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672-73 ¶ 19; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *SBC-AT&T Order*, 20 FCC Rcd at 18300-01 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543-44 ¶ 40. Section 309(e)’s requirement applies only to those applications to which Title III of the Act applies, i.e., radio station licenses. We are not required to designate for hearing applications for the transfer or assignment of Title II authorizations when we are unable to find that the public interest would be served by granting the applications, see *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979), but of course may do so if we find that a hearing would be in the public interest.

<sup>115</sup> 47 U.S.C. §§ 308, 310(d). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18525-26 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

<sup>116</sup> See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 (continued....)

does not, as a general rule, re-evaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing.<sup>117</sup> Conversely, section 310(d) obligates the Commission to consider whether the proposed transferee is qualified to hold Commission licenses.<sup>118</sup> When evaluating the qualifications of a potential licensee, the Commission previously has stated that it will review allegations of misconduct directly before it,<sup>119</sup> as well as conduct that takes place outside of the Commission.<sup>120</sup> In this proceeding, no issues have been raised with respect to the basic qualifications of Verizon Wireless and RCC, both of which previously have been found qualified to hold Commission licenses.<sup>121</sup> Thus, we find that, at this time, there is no reason to re-evaluate the qualifications of these entities.

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¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

<sup>117</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20302 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-64 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44. See also Stephen F. Sewell, Assignment and Transfers of Control of FCC Authorizations under Section 310 (d) of the Communications Act of 1934, 43 FED. COMM. L.J. 277, 339-40 (1991). The policy of not approving assignments or transfers when issues regarding the licensee's basic qualifications remain unresolved is designed to prevent licensees from evading responsibility for misdeeds committed during the license period. See *id.*

<sup>118</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20302-03 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 44.

<sup>119</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission will consider any violation of any provision of the Act, or of the Commission's rules or policies, as predictive of an applicant's future truthfulness and reliability and, thus, as having a bearing on an applicant's character qualifications. *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47; Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, Gen. Docket No. 81-500, *Report and Order and Policy Statement*, 100 F.C.C. 2d 1179, 1209-10 ¶ 57 (1986), *modified*, 5 FCC Rcd 3252 (1990), *recon. granted in part*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

<sup>120</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 11; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14872-73 ¶ 16; *DoCoMo-Guam Order*, 21 FCC Rcd at 13590 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47. The Commission previously has determined that in its review of character issues, it will consider forms of adjudicated, non-Commission related misconduct that include: (1) felony convictions; (2) fraudulent misrepresentations to governmental units; and (3) violations of antitrust or other laws protecting competition. See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 172; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 184; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 n.86; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21548 ¶ 47.

<sup>121</sup> See, e.g., Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22, *Memorandum Opinion and Order*, 23 FCC Rcd 514 (Jan. 9, 2008); (continued....)

28. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.<sup>122</sup> Our public interest analysis may also entail assessing whether the proposed transaction will affect the quality of communications services or will result in the provision of new or additional services to consumers.<sup>123</sup> In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.<sup>124</sup>

29. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.<sup>125</sup> The Commission and DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission’s competitive review differ somewhat from those applied by DOJ.<sup>126</sup> Like DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction. The Antitrust Division of DOJ, however, reviews

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Applications of WWC Holding Co., Inc. and RCC Minnesota, Inc., For Consent to Assignment of Licenses, *Memorandum Opinion and Order*, 22 FCC Rcd 6589 (WTB 2007).

<sup>122</sup> *E.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20303 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>123</sup> *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20303-04 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064-65 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>124</sup> *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 12; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 20; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301-02 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

<sup>125</sup> *See, e.g.*, *AT&T-Dobson Order*, 22 FCC Rcd at 20304 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5673 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

<sup>126</sup> *See, e.g.*, *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 n.75; *DoCoMo-Guam Order*, 21 FCC Rcd at 13591 n.77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Rainbow DBS Company LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and Related Special Temporary Authorization*, IB Docket No. 05-72, *Memorandum Opinion and Order*, 20 FCC Rcd 16868, 16874 ¶ 12 (2005); *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. *See also* *Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff’d sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies “to analyze proposed mergers under the same standards that the Department of Justice . . . must apply”).

telecommunications mergers pursuant to section 7 of the Clayton Act, which prohibits mergers that may substantially lessen competition.<sup>127</sup> The Antitrust Division's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations. The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.<sup>128</sup>

30. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.<sup>129</sup> For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.<sup>130</sup> Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.<sup>131</sup> Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>132</sup> Similarly, section 214(c) of the

<sup>127</sup> 15 U.S.C. § 18.

<sup>128</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

<sup>129</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

<sup>130</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 13; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14873-74 ¶ 18; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

<sup>131</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets). See also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., 13 FCC Rcd 18025, 18115 ¶ 156 (conditioning approval on the divestiture of MCI's Internet assets); Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) ("Deutsche Telekom-VoiceStream Wireless Order") (conditioning approval on compliance with agreement with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

<sup>132</sup> 47 U.S.C. § 303(r). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20305 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC (continued....)

Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”<sup>133</sup> Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.<sup>134</sup> Despite this broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.<sup>135</sup> Thus, we generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.<sup>136</sup>

#### IV. COMPETITIVE ANALYSIS

31. Consistent with our practice when reviewing proposed wireless transactions affecting the mobile telephony market, our analysis of the proposed Verizon-RCC transaction considers the potential competitive effects that might result from increased concentration.<sup>137</sup> Horizontal transactions raise

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Rcd at 21545 ¶ 43; *FCC v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

<sup>133</sup> 47 U.S.C. § 214(c). *See also* *AT&T-Dobson Order*, 22 FCC Rcd at 20305-06 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

<sup>134</sup> *See, e.g.,* *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592-93 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43. *See also* *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7<sup>th</sup> Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

<sup>135</sup> *See, e.g.,* *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *AT&T-BellSouth Order*, 22 FCC Rcd at 5674-75 ¶ 22; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>136</sup> *See, e.g.,* *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 14; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14874-75 ¶ 19; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>137</sup> *See, e.g.,* *T-Mobile-SunCom Order*, 23 FCC Rcd at 2520 ¶ 11; *AT&T-Aloha Order*, 23 FCC Rcd at 2236-37 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20306 ¶ 15; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 21; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 18; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11539 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission, at § 0.1, n.6. (Apr. 2, 1992, revised Apr. 8, 1997) (“*DOJ/FTC Merger Guidelines*”).

competitive concerns when they reduce the availability of choices to the point that the resulting firm has the incentive and the ability, either by itself or in coordination with other firms, to raise prices. A fundamental tenet of the Commission's public interest review is that, absent significant offsetting efficiencies or other public interest benefits, a transaction that creates or enhances significant market power or facilitates its use is unlikely to serve the public interest.<sup>138</sup>

32. As we have discussed in several recent wireless transaction orders – including *AT&T-Dobson Order*, *GCI-Alaska DigiTel Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, and *Cingular-AT&T Wireless Order* – transactions, such as mergers, can diminish competition and allow firms to exercise market power in a number of ways.<sup>139</sup> However, a horizontal transaction or merger is unlikely to create or enhance market power or facilitate its exercise unless the transaction significantly increases concentration and results in a concentrated market, properly defined and measured. Transactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis. Thus, when examining the effect of proposed transactions, we have first applied a three-part initial “screen” that identifies those local markets in which there is clearly no competitive harm arising from the transaction. Two parts of the screen utilize changes in the measures of the Herfindahl-Hirschman Index (“HHI”) market concentration. The final part of this screen examines the input market for spectrum available on a nationwide basis for the provision of mobile telephony services.<sup>140</sup> For those markets that are not eliminated by the initial screen, we then conduct, on a market-by-market basis, an analysis of other market factors that pertain to competitive effects, including the incentive and ability of other existing firms to react and of new firms to enter the market, in response to attempted exercises of market power by the merged entity. Ultimately, we must assess whether it is likely that the combined firm could exercise market power in any particular market.<sup>141</sup>

33. Our competitive analysis is set forth in six sections below. First, consistent with these recent wireless transaction orders, we begin our competitive analysis by determining the appropriate market definitions for this transaction.<sup>142</sup> This includes determination of the product market and geographic

<sup>138</sup> See *T-Mobile-SunCom Order*, 23 FCC Rcd at 2519 ¶ 9; *AT&T-Aloha Order*, 23 FCC Rcd at 2236 ¶ 7; *AT&T-Dobson Order*, 22 FCC Rcd at 20301 ¶ 10; *GCI-Alaska-DigTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Order*, 21 FCC Rcd at 13589-90 ¶ 13; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 22; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 30; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 68; *DOJ/FTC Merger Guidelines* § 0.1, n.6. The ability to raise prices above competitive levels is generally referred to as “market power.” Market power may also enable sellers to reduce competition on dimensions other than price, including innovation and service quality.

<sup>139</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 23; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11541 ¶ 24; *Sprint-Nextel Order*, 20 FCC Rcd at 13982 ¶ 32; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 24; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 70.

<sup>140</sup> See, e.g., *T-Mobile-SunCom Order*, 23 FCC Rcd at 2520 ¶ 11; *AT&T-Aloha Order*, 23 FCC Rcd at 2237 ¶ 10; *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 22; *DoCoMo-Guam Order*, 21 FCC Rcd at 13592 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

<sup>141</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 16; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14875 ¶ 22; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11540 ¶ 23; *Sprint-Nextel Order*, 20 FCC Rcd at 13981 ¶ 31; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067 ¶ 23; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21556 ¶ 69; *DOJ/FTC Merger Guidelines* § 1.0.

<sup>142</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20307 ¶ 17; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 24; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593-94 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

markets, as well as the identification of the market participants. It also considers the input market for spectrum available for the provision of mobile telephony services. As discussed more fully below, applying the same analysis as in the recent transaction orders, we find the product market to be the combined market for mobile telephony services, and the geographic market to be local markets.<sup>143</sup> In accordance with the approach that we applied in the *AT&T-Dobson Order*, we examine the input market based on an updated initial spectrum screen that includes not only spectrum in the cellular, SMR, and broadband PCS bands, but also spectrum in the 700 MHz Band.<sup>144</sup> Based on the same precedent, our initial spectrum aggregation screen for the proposed transaction is set at 95 megahertz. In addition, while we still maintain that it is premature to include AWS-1 (1710-1755 MHz and 2110-2155 MHz) and Broadband Radio Service (“BRS”) spectrum in the initial screen, we will consider such spectrum in our case-by-case analyses to the extent such spectrum is available in any local market not eliminated by our screen.<sup>145</sup> We then examine the market participants holding spectrum in these bands

34. Second, we apply the Commission’s three-part initial screen to this transaction. As described above, through this process, we identify those markets that we subject to further case-by-case review while eliminating from further review those markets in which there clearly is no competitive harm. Third, we examine the remaining markets with regard to specific issues related to potential competitive harms associated with horizontal concentration. We consider the potential of both unilateral and coordinated effects resulting from the merger. Fourth, we undertake a granular, market-by-market analysis of the local markets identified by the initial screen. In this transaction, we identify 17 particular local markets by the screen and, after our additional analysis determine that in six of those markets competitive harm would be likely. Fifth, we address other concerns raised by the petitioners in response to this transaction, including the potential adverse impact of the transaction with regard to the provision of roaming services. Sixth, we examine the public interest benefits of the proposed transaction and conclude that the transaction, subject to the conditions we impose, is likely to result in transaction-specific public interest benefits.

35. Finally, consistent with our determination that the proposed Verizon-RCC transaction would likely pose significant competitive harms in six local mobile telephony markets, we adopt various conditions and remedies to prevent these harms.

#### **A. Market Definitions**

36. Consistent with recent wireless transaction orders, we establish at the outset the appropriate market definitions for our evaluation of the proposed Verizon-RCC transaction. This includes establishing the product and geographic market definitions that we will apply. We also discuss the input market for mobile telephony spectrum and identify market participants that would compete with the proposed merged entity in the provision of mobile telephony services.

##### **1. Product Market Definition**

37. As noted above, we adopt the same product market definition as applied by the Commission in recent transactions involving the mobile telephony market – *AT&T-Dobson Order*, *GCI-Alaska DigiTel Order*, *DoCoMo-Guam Order*, *ALLTEL-Midwest Wireless Order*, *Sprint-Nextel Order*, *ALLTEL-Western Wireless Order*, and *Cingular-AT&T Wireless Order*. In those orders, the Commission found that there

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<sup>143</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20308-11 ¶¶ 21-25; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶¶ 25-27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13593 ¶ 18; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541-43 ¶¶ 26-31; *Sprint-Nextel Order*, 20 FCC Rcd at 13983-91 ¶¶ 37-57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13067-70 ¶¶ 25-36; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557-63 ¶¶ 71-91.

<sup>144</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20307-08 ¶ 17.

<sup>145</sup> *Id.* at 20308 ¶ 17.

are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services.<sup>146</sup> Nevertheless, it analyzed all of these product markets under the combined market for mobile telephony service.<sup>147</sup> Based on consideration of various factors, including the nature of these services and their relationship with each other, the Commission found that this approach provided a reasonable assessment of any potential competitive harm resulting from the transactions under review.<sup>148</sup>

38. The Applicants concur that the product market definition should include interconnected mobile voice and data services, as well as residential and enterprise services, in a combined market for mobile telephony service.<sup>149</sup> Based on our precedent and the record in this proceeding, we will use the same product market definition in our analysis of the proposed transaction.

## 2. Geographic Market Definition

39. In its recent wireless transaction orders, the Commission applied the “hypothetical monopolist test” and found that the relevant geographic markets are local, larger than counties, may encompass multiple counties, and, depending on the consumer’s location, may even include parts of more than one state.<sup>150</sup> The Commission in these orders identified two sets of geographic areas that effectively may be used to define local markets – CEAs and CMAs.<sup>151</sup> Because these two sets of geographic areas

<sup>146</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 28; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21558 ¶ 74.

<sup>147</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

<sup>148</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20308 ¶ 21; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068-69 ¶¶ 29-30; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21559-60 ¶¶ 77, 79.

<sup>149</sup> Application, Public Interest Statement at 27.

<sup>150</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542-43 ¶¶ 29-30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562-63 ¶¶ 89-90.

<sup>151</sup> We have chosen CEAs and CMAs for our data analysis because both are consistent in order of magnitude with the local market definition we have adopted and because each brings a different consideration to the analysis. CEAs are designed to represent consumers’ patterns of normal travel for personal and employment reasons and may therefore capture areas within which groups of consumers would be expected to shop for wireless service. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURVEY OF CURRENT BUSINESS, February 1995, at 75. In addition, CEAs should be areas within which any service providers present would have an incentive to market – and actually provide – service relatively ubiquitously. Conversely, CMAs are the areas in which the Commission initially granted licenses for the cellular service. Although partitioning has altered this structure in many license areas, CMAs represent the fact that the Commission’s licensing programs have to a certain degree shaped this market by defining the initial areas in which wireless providers had spectrum on which to base service offerings, and they may therefore serve as a reasonable proxy for where consumers face the same competitors. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105; see also *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14876-77 ¶ 27; *DoCoMo-Guam Order*, 21 FCC Rcd at 13594 ¶ 20; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 29; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 57; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072-73 ¶¶ 44-45.

come from different sides of the equation – demand in one case, supply in the other – the Commission found them to be useful cross-checks on each other and, together, they help ensure that the Commission’s analysis does not overlook local areas that require more detailed analysis.<sup>152</sup>

40. The Applicants undertake their competitive analysis at the CMA level “in the interest of expedited processing.”<sup>153</sup> Nonetheless the Applicants argue that the market for mobile telephony service is increasingly national in scope.<sup>154</sup> The Applicants argue that Verizon Wireless, along with other national carriers, both advertises and sets prices on a national basis, leaving very little room for local or regional variation in pricing, and therefore local market conditions are less relevant to Verizon Wireless’s competitive strategy than actions taken by other national carriers.<sup>155</sup> The Applicants also emphasize the increasing reliance on national rate plans and argue that the large (82 percent) share of mobile telephony customers who subscribe to a national carrier or an affiliate of a national carrier supports the conclusion that consumers shop for national plans and shop national rates, all of which are set on a national level.<sup>156</sup>

41. For this transaction, we continue to find that the most appropriate geographic level for market analysis is comprised of CMAs and CEAs. For the proposed transaction at issue here, we determine that the geographic market is the area within which a consumer is most likely to shop for mobile telephony service.<sup>157</sup> For most individuals, this will be a local area, as opposed to a larger regional or nationwide area.<sup>158</sup> This is because “in response to a small but not insignificant price increase by providers” that offer service where consumers live, work or travel, most consumers are unlikely to switch to alternative carriers that operate only outside of such a locality.<sup>159</sup> Further, the Applicants’ argument that prices are set on a national level, and that consumers shop for national plans and national rates, does not undercut the finding of a local geographic market. We conclude that their assertions regarding the behavior of nationwide service providers and consumers do not establish the existence of a national market.<sup>160</sup> Accordingly, we will use the same geographic market definition in this analysis as the Commission has used in its recent wireless transaction orders discussed above.

<sup>152</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11546 ¶ 35; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567-68 ¶ 105.

<sup>153</sup> Application, Public Interest Statement at 27.

<sup>154</sup> *Id.* at 27, 38.

<sup>155</sup> *Id.* at 27, 39.

<sup>156</sup> *Id.* at 27, 39.

<sup>157</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20309 ¶ 23. See also *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89.

<sup>158</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20310-11 ¶ 25; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11542 ¶ 30; *Sprint-Nextel Order*, 20 FCC Rcd at 13990 ¶ 56; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 35; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 89. See also *Twelfth Competition Report*, 23 FCC Rcd at 2331-32 ¶ 174 (indicating that the average person shops for mobile telephony services in markets that include place of work, place of residence, and surrounding areas that are economically related; such areas generally are larger than counties).

<sup>159</sup> *DOJ/FTC Merger Guidelines* §§ 1.11, 1.12.

<sup>160</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21562 ¶ 88.

### 3. Input Market for Spectrum

42. Consistent with the Commission's recent wireless transaction orders, we also examine this transaction in light of the input market for spectrum associated with the provision of mobile telephony services. In particular, the Commission has made a determination to include, in its evaluation of potential competitive harm, spectrum in particular bands that is "suitable" for the provision of mobile telephony services. As first explained by the Commission in the 2004 *Cingular-AT&T Wireless Order*, suitability is determined by whether the spectrum is capable of supporting mobile service given its physical properties and the state of equipment technology, whether the spectrum is licensed with a mobile allocation and corresponding service rules, and whether the spectrum is committed to another use that effectively precludes its uses for mobile telephony.<sup>161</sup>

43. For the proposed Verizon-RCC transaction, we analyze the input market for spectrum based on the approach that we established in the *AT&T-Dobson Order*. Specifically, we apply a 95 megahertz initial spectrum aggregation screen to our market-by-market review of the proposed transaction. In the *AT&T-Dobson Order*, adopted in November of 2007, the Commission found that, in light of recent developments, spectrum "suitable" for the provision of mobile telephony services includes not only approximately 200 megahertz of cellular, broadband PCS, and Specialized Mobile Radio ("SMR") spectrum, but also an additional 80 megahertz of 700 MHz band spectrum (in the 698-806 MHz band) throughout the nation, bringing the total amount of spectrum suitable for mobile telephony services on a nationwide basis to approximately 280 megahertz.<sup>162</sup> Applying the Commission's previous determination that a spectrum aggregation screen should be based approximately on one-third of the total bandwidth available for mobile telephony services, we revised the spectrum aggregation screen from 70 megahertz to 95 megahertz, approximately one-third of the 280 megahertz of the spectrum designated as being available for mobile telephony services.<sup>163</sup> We explained that, consistent with the Commission's previous orders, setting this screen at approximately one-third of the total suitable spectrum is designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are identified and subjected to more in-depth analysis.<sup>164</sup> Under the revised screen, the Commission found that there was no need for additional analysis where there was at least 185 megahertz of spectrum (of the 280 megahertz of mobile telephony spectrum) available to other firms to compete in the provision of mobile telephony service.<sup>165</sup>

44. At the time of the *AT&T-Dobson Order*, we did not find it appropriate to include certain other spectrum bands – particularly AWS-1 and BRS spectrum – in the initial spectrum screen because they do not yet meet one of the criteria for suitability on a nationwide basis.<sup>166</sup> We noted, however, that AWS-1 and BRS spectrum is capable of supporting mobile telephony services given its physical properties and the state of equipment technology, and the spectrum is licensed with allocation and service rules that allow mobile uses. We also noted that, in many markets, this spectrum is committed to another use that effectively precludes its use for mobile telephony, and it was often unclear whether it will be available for

<sup>161</sup> See *id.* at 21560-61 ¶ 81; see also *AT&T-Dobson Order*, 22 FCC Rcd at 20311 ¶ 26; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14877 ¶ 28; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 21; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11543 ¶ 31; *Sprint-Nextel Order*, 20 FCC Rcd at 13992 ¶ 61; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 41.

<sup>162</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20312-14 ¶¶ 30-31.

<sup>163</sup> See *id.* at 20312-13 ¶ 30.

<sup>164</sup> See *id.*

<sup>165</sup> See *id.*

<sup>166</sup> See *id.* at 20314-15 ¶¶ 32-34.

mobile use in the sufficiently near-term.<sup>167</sup> We determined in the *AT&T-Dobson Order* that excluding this spectrum on this basis was appropriate since the initial screen was intended to be conservative, that is, erring in the direction of identifying more rather than fewer markets for in-depth review.<sup>168</sup> However, the Commission did consider the extent to which AWS-1 or BRS licenses were in fact available *locally*, and included them in the local spectrum input market, in our detailed, case-by-case analysis of markets caught by the initial screen.<sup>169</sup>

45. The Applications for the proposed Verizon-RCC transaction were filed in September of 2007, prior to the release of the *AT&T-Dobson Order*. Therefore the Applicants' arguments concerning the spectrum bands that should be included in the spectrum input market began with the discussion of the approximately 200 megahertz of spectrum in the cellular, PCS, and SMR bands that the Commission had determined to be the amount of spectrum suitable for the provision of mobile telephony services prior to adoption of the *AT&T-Dobson Order*. The Applicants contend that the input market should include not only these previously designated cellular, PCS, and SMR bands, but also BRS/EBS 2.5 GHz spectrum, AWS-1 spectrum, and 700 MHz spectrum.<sup>170</sup>

46. As described above, we decided in the *AT&T-Dobson Order* late last year to include 700 MHz spectrum as part of the initial spectrum screen, but not AWS-1 and BRS spectrum.

47. For the proposed Verizon-RCC transaction, we apply the same analysis of the input market for spectrum that we used in the *AT&T-Dobson Order* as part of an initial screen for determining which markets require case-by-case analysis. Thus, we apply an initial spectrum screen of 95 megahertz of cellular, broadband PCS, SMR, and 700 MHz spectrum in the input market. In this transaction, application of the 95 megahertz spectrum aggregation part of our initial three-part screen does not require us to review any individual markets. For those markets subject to further review under the HHI parts of the screen, however, we consider the extent to which AWS-1 or BRS licenses are available *locally*, and include them in the local spectrum input market in our detailed, case-by-case analysis of markets.

#### 4. Market Participants

48. In its recent wireless transaction orders, when computing initial measures of market concentration, the Commission limited its analysis of transactions involving mobile telephony services to cellular, PCS, and SMR facilities-based service providers, and excluded satellite service providers, wireless Voice over Internet Protocol ("VoIP") providers, mobile virtual network operators ("MVNOs"), and resellers from consideration.<sup>171</sup> We continue to find that mobile telephony services offered by

<sup>167</sup> See *id.*

<sup>168</sup> See *id.* at 20314 ¶ 32; see also *Sprint-Nextel Order*, 20 FCC Rcd at 13993-94 ¶¶ 62, 65; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 10374 ¶ 49; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 108-109.

<sup>169</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20315 ¶ 35.

<sup>170</sup> Application, Public Interest Statement at 28-38.

<sup>171</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92. Although satellite providers offer facilities-based mobile voice and data services, the price of these services is, at present, significantly higher than for services offered by cellular, PCS, or SMR providers. Therefore, most consumers would not view satellite phones as substitutes for mobile telephony. See Global Com, Iridium Satellite Phone Service Plans, at [http://www.globalcomsatphone.com/satellite/services/iridium\\_service\\_plans.html](http://www.globalcomsatphone.com/satellite/services/iridium_service_plans.html) (last visited June 26, 2008); GlobalStar, Airtime Pricing, Voice Pricing, at <http://www.globalcomsatphone.com/satellite/services/globalstar.html> (last visited June 26, 2008). See also *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest* (continued....)

facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality and are indistinguishable to the consumer.<sup>172</sup> As discussed above, because of recent developments we also will consider 700 MHz spectrum in our spectrum aggregation analysis. To the extent that entities provide facilities-based mobile telephony services using 700 MHz spectrum, we also consider them to be market participants.<sup>173</sup> In addition, we will consider AWS-1 and BRS providers market participants in our in-depth analysis of individual local markets not eliminated by our initial screen to the extent that they provide mobile telephony services.

49. The Applicants contend that the Commission should revisit its previous conclusion to exclude satellite carriers, wireless VoIP providers, MVNOs, and resellers from consideration when computing initial measures of market concentration.<sup>174</sup> They claim that the national resellers/MVNOs have recently emerged to compete successfully on branded packaged voice and data services and therefore also should be considered as legitimate market participants.<sup>175</sup> They further state that cable operators are also expected to bundle wireless services with their video and VoIP offerings, and therefore the Commission should consider these providers to be participants in the relevant market as well.<sup>176</sup>

50. Under Commission precedent, we generally limit our analysis to facilities-based service providers, either nationwide or regional, excluding MVNOs and resellers from consideration when computing initial concentration measures. While the Commission has acknowledged that non-facilities based service options have an impact in the marketplace and in some instances may provide additional constraints against anticompetitive behavior, to date, in evaluating proposed transactions involving mergers of wireless service providers, the Commission has not included resellers or MVNOs in its initial screen.<sup>177</sup> We take account of the role of resellers and MVNOs, to the extent necessary, in our discussion

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*Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. We also do not consider wireless VoIP providers as providing the same functionality as mobile telephony providers because the service they provide now is nomadic rather than mobile. See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38. Wireless VoIP services are nomadic in the sense that one can use them from a number of different locations (for example, by using a laptop at different internet cafes all over a town). See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 n.130; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 n.108; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 n.104; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544-45 n.134; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 n.151.

<sup>172</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 32; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 91.

<sup>173</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20316 ¶ 36.

<sup>174</sup> Application, Public Interest Statement at 33.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 34.

<sup>177</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶ 33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶¶ 38-39; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

of likely competitive effects below.<sup>178</sup> Accordingly, we will use the same market participant definition in this analysis as the Commission has in its recent wireless transaction orders, and expand this analysis to include facilities-based entities that are using the designated 80 megahertz of licensed 700 MHz spectrum.<sup>179</sup>

## B. Initial Screen

51. Having determined the appropriate market definitions for this transaction, our competitive analysis next applies the Commission's initial screen, followed by a further case-by-case review of the markets identified by that screen. As discussed in previous wireless transaction orders, the purpose of this initial screen is to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace.<sup>180</sup> The initial screen is designed to be conservative and ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In addition to market concentration, which is measured with market share data, we consider the input market of spectrum that is suitable for the provision of mobile telephony services because spectrum is a necessary resource for wireless service providers to compete effectively. This initial screen is only the beginning of our competitive analysis. Subsequent sections examine on a case-by-case analysis those markets identified by the screen, where potential harm is possible, in order to determine whether harm is in fact likely and a remedy needed.

52. For this transaction, we use our June 2007 NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers, to estimate mobile telephony subscribership levels, market shares, and concentration for various geographic markets.<sup>181</sup> Consistent with our discussion of geographic market definition above, in calculating market shares and market concentration, we analyze carrier data using two sets of geographic areas, CEAs<sup>182</sup> and CMAs.<sup>183</sup>

<sup>178</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13071 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

<sup>179</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 38.

<sup>180</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20317 ¶ 39; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14881 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11547 n.151; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 62; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13073-74 ¶ 48; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21568-69 ¶¶ 106-109.

<sup>181</sup> These data indicate the number of assigned phone numbers that a wireless carrier has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19<sup>TH</sup> EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties. In the *Cingular-AT&T Wireless* and *Sprint-Nextel* transactions, the Commission also used billing data submitted by the nationwide wireless service providers. See *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 103. Although we may decide to collect such billing data as part of our review of future transactions, we found that the competitive situation associated with this proposed transaction was such that collection of third-party billing data was unnecessary.

<sup>182</sup> CEAs are defined by the Bureau of Economic Analysis ("BEA"), and are composed of a single economic node and surrounding counties that are economically related to the node. There are 348 CEAs in the 50 states and the District of Columbia. Of the 3,141 U.S. counties, 2,267 are non-nodal counties that are assigned to a CEA based first on county-to-county commuting flows from the 1990 Census and second on locations of the most widely read regional newspapers. Three quarters of non-nodal counties were assigned based on commuting patterns. See Kenneth P. Johnson, *Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Feb. 1995, at 75-81. In (continued....)

Our initial screen criteria identifies, for further case-by-case market analysis, those markets in which, post- transaction: (1) the HHI would be greater than 2800 and the change in HHI will be 100 or greater, (2) the change in HHI would be 250 or greater, regardless of the level of the HHI, and (3) the Applicants would have a 10 percent or greater interest in 95 megahertz or more of cellular, PCS, SMR, and 700 MHz spectrum.

53. Our initial screen identifies a total of 17 CMAs and 15 CEAs that require further competitive review. All 17 CMAs and 15 CEAs were flagged by one of the HHI initial screens and none of these markets triggered the 95 megahertz spectrum aggregation screen. As noted previously, because the applications for the proposed Verizon-RCC transaction were filed prior to the release of the *AT&T-Dobson Order*, the Applicants identify markets that would be captured using the 70 megahertz spectrum aggregation screen used by the Commission prior to the *AT&T-Dobson Order*.<sup>184</sup> In particular, in their Applications they identify nine CMAs with one or more counties in which the combined entity would hold 70 megahertz or more of PCS and cellular spectrum.<sup>185</sup> In light of the Commission's decision to revise the initial spectrum aggregation screen to 95 megahertz in the *AT&T-Dobson Order*, the Applicants subsequently revised their request by noting that the Commission's applicable initial spectrum aggregation screen is not triggered in any market, since the post-merger entity's spectrum holdings would fall below the revised screen of 95 megahertz even in markets identified by the previous 70 megahertz screen.<sup>186</sup>

54. VDPS argues that the results from the auction of 700 MHz licenses in Auction No. 73 should be considered in the Commission's spectrum aggregation analysis because under the 95 megahertz screen, 700 MHz spectrum is considered "suitable" spectrum for the provision of mobile telephony service.<sup>187</sup> VDPS requests that the Commission delay action on this transaction until the 700 MHz licenses in Auction No. 73 are assigned.<sup>188</sup> The Applicants disagree, arguing that the Commission should not delay action on this transaction until the 700 MHz spectrum has been assigned.<sup>189</sup> The Applicants further argue

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November 2004, the Bureau of Economic Analysis updated definitions for CEAs. The total number of CEAs decreased from 348 to 344. Non-nodal county assignment continued to be based on county-to-county commuting flows and locations of the most widely read regional newspapers. See Kenneth P. Johnson & John R. Kort, *2004 Redefinition of the BEA Economic Areas*, SURV. OF CURRENT BUS., Nov. 2004, at 68-71. For purposes of this transaction, we did not adopt the new CEA definitions.

<sup>183</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20317-18 ¶ 40; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14890-91 ¶ 61; *DoCoMo-Guam Order*, 21 FCC Rcd at 13596 n.110; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11545 ¶ 35; *Sprint-Nextel Order*, 20 FCC Rcd at 13993 ¶ 63; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13072 ¶ 44; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21567 ¶ 104. CMAs are the regions originally used by the Commission for issuing cellular licenses. There are 734 CMAs, made up of 305 MSAs, 428 RSAs, and a market for the Gulf of Mexico. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 ¶ 78. RSAs are regions defined by the Commission for the purpose of issuing spectrum licenses. See *Twelfth Competition Report*, 23 FCC Rcd at 2277 n.145. See discussion justifying the use of CEAs and CMAs *supra* ¶ 41.

<sup>184</sup> Application, Public Interest Statement at 43-55.

<sup>185</sup> *Id.* The nine CMAs are: CMA221 Fargo-Morehead, ND-MN; CMA248 Burlington, VT; CMA276 Grand Forks, ND-MN; CMA560 New York 2 - Franklin; CMA582 North Dakota 3 - Barnes; CMA670 Vermont 1 - Franklin; CMA680 Vermont 2 - Addison; CM694 Washington 2 - Okanogan; and CMA695 Washington 3 - Ferry.

<sup>186</sup> The Applicants do not include spectrum won by Verizon Wireless in Auction No. 73 in their spectrum totals. See Verizon Wireless/RCC Opposition at 8-9.

<sup>187</sup> VDPS Supplement to Petition to Deny at 9.

<sup>188</sup> *Id.*

<sup>189</sup> Verizon Wireless/RCC Opposition at 10.

that the 700 MHz spectrum auctioned in Auction 73 is “greenfield” spectrum and, because no network has yet been constructed, would not have any effect on market shares and therefore the HHI indices.<sup>190</sup>

55. Licenses won by Verizon Wireless in Auction No. 73 have not been included in our initial spectrum screen. Verizon Wireless’s applications for these licenses are still pending and therefore it has not yet acquired any spectrum as a result of this auction.<sup>191</sup> Hence, we conclude it would not be appropriate to include this spectrum in our analysis at this time.

56. Neither the Applicants nor the petitioners identify markets that would be captured using initial screens based on the post-transaction HHI and the change in the HHI, or the change in the HHI alone. However, VDPS emphasizes that, if approved, the transaction would reduce the number of rival wireless carriers from three to two “throughout most of Vermont”<sup>192</sup> or at least “in many Vermont counties.”<sup>193</sup> In addition, VDPS asserts that HHI indices “are extremely high across Vermont markets” and that use of the Commission’s two HHI-based screening tests “would likely result in the Commission performing a case-by-case analysis of all Vermont CMAs that remain part of the transaction.”<sup>194</sup> The Applicants argue that Verizon Wireless has committed to divesting network operations and customers throughout the overwhelming majority of the state of Vermont, in which case there will be no change in the HHI as a result of the proposed transaction.<sup>195</sup> The Applicants further state that Verizon Wireless would acquire and retain a cellular spectrum license only in areas where it does not currently operate a cellular system and has only a small market share, and that the change in the HHI would be insignificant in those few counties.<sup>196</sup>

### C. Horizontal Issues

57. This section examines how the transaction could affect competitive behavior in the 17 CMAs and 15 CEAs identified by the initial screen as requiring additional analysis to determine whether the proposed transaction would result in competitive harm. As discussed in the Commission’s recent wireless transaction orders, competition may be harmed either through unilateral actions<sup>197</sup> by the merged entity or through coordinated interaction<sup>198</sup> among firms competing in the relevant market.

<sup>190</sup> *Id.*

<sup>191</sup> See Application, File No. 0003382435 (filed Apr. 2, 2008) (pertaining to the A- and B-block licenses won in Auction 73); Application, File No. 0003382444 (filed Apr. 2, 2008) (pertaining to the C-block licenses won in Auction 73).

<sup>192</sup> VDPS Petition to Deny at 10.

<sup>193</sup> VDPS Supplement to Petition to Deny at 7. See also VDPS Petition to Deny at 9-10; Vermont PIRG Extension Motion at 2.

<sup>194</sup> VDPS Supplement to Petition to Deny at 7.

<sup>195</sup> Verizon Wireless/RCC Opposition at 9.

<sup>196</sup> *Id.* at 9-10, 18-19.

<sup>197</sup> Unilateral effects are those that result when a merged firm finds it profitable to alter its behavior by increasing prices or reducing output. *DOJ/FTC Horizontal Merger Guidelines* § 2.2. See *AT&T Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 ¶ 68; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.112; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

<sup>198</sup> Coordinated interaction consists of actions by a group of firms that are profitable for each of the firms involved only because the other firms react by accommodating these actions rather than attempting to undercut them. See *DOJ/FTC Horizontal Merger Guidelines* § 2.1; *AT&T Dobson Order*, 22 FCC Rcd at 20318-19 ¶ 42; *GCI-Alaska* (continued....)

58. In this Memorandum Opinion and Order, we find that extended discussions of unilateral and coordinated effects are unnecessary.<sup>199</sup> First, many aspects of our previous analyses in wireless transaction orders are unchallenged here.<sup>200</sup> Second, because only a limited number of local areas require

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*DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 ¶ 25, n.113; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 n.167; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 n.211; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151.

<sup>199</sup> In certain of the Commission's recent major CMRS merger orders, the initial screen identified large numbers of local areas as requiring in-depth analysis. For example, in the Cingular-AT&T Wireless merger, 270 CMAs were caught by the screen; when the screen was applied to CEAs, 180 such regions were caught. See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21569 ¶ 110. The Sprint-Nextel screen caught 190 CMAs and 124 CEAs. See *Sprint-Nextel Order*, 20 FCC Rcd at 13994 ¶ 63. Finally, the ALLTEL-Western Wireless screen caught 19 CMAs and 11 CEAs. See *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13074 ¶ 50. These large numbers meant that it was impractical to set out in an order a discussion of each local market; however, such an extended exposition was also unnecessary. The Commission proceeded by examining under what circumstances competitive harm—in the form of either coordinated interaction or unilateral effects—would be likely in local mobile telephony markets. This in-depth, qualitative analysis yielded criteria for determining whether harm is likely that were applicable to all the markets caught by the screen, which were then applied to individual markets. See *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894-99 ¶¶ 69-85; *DoCoMo-Guam Order*, 21 FCC Rcd at 13597 n.114; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd 11550-55 ¶¶ 47-62; *Sprint Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164. Market-specific discussion was primarily confined to those markets for which the Commission concluded that harm was likely, and was contained in confidential appendices.

<sup>200</sup> For unilateral effects, the unchallenged aspects include: (1) product differentiation and substitutability (see *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14002-07 ¶¶ 94-107; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13077-79 ¶¶ 59-64; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21571-75 ¶¶ 119-133); (2) network effects (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13082-83 ¶¶ 75-77; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578 ¶¶ 142-145); (3) marginal cost reductions (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 14009 ¶ 115); (4) spectrum and advanced wireless services (see *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11552 ¶¶ 53-54; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13819-21 ¶¶ 73-74; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21577-78 ¶¶ 138-141); and (5) penetration (see *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11553-54 ¶¶ 58-59; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13083-85 ¶¶ 78-83; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21578-80 ¶¶ 146-149). For coordinated interaction, the unchallenged aspects include: (1) firm and product homogeneity (see *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 47; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13997 ¶¶ 75-78; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶ 90; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21582-84 ¶¶ 156-159); (2) existing cooperative ventures (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21585 ¶ 163); (3) number of firms (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 71-72); (4) technology development (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13998-99 ¶¶ 81-83); (5) response of rivals (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13999-14000 ¶¶ 84-88); (6) transparency of information (see *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-* (continued....)

in-depth analysis, it is feasible to provide a market-by-market discussion of each CMA where we are requiring business unit divestitures.<sup>201</sup> We therefore discuss unilateral effects and coordinated interaction at a general level only to the extent issues are raised by the parties to this proceeding.<sup>202</sup>

## 1. Unilateral Effects

59. Verizon Wireless's acquisition of RCC could lead to changes in the structure of the markets in 17 CMAs or 15 CEAs identified above by our initial screen for further analysis. Thus, we have examined in more detail the possibility that the proposed transaction may lead to competitive harm through unilateral actions by the merged entity.<sup>203</sup> Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by "elevating price and suppressing output."<sup>204</sup> As discussed in the Commission's wireless transaction orders, in the case of mobile telephony service, as defined above, this might take the form of delaying improvements in service quality or adversely adjusting plan features without changing the plan price.<sup>205</sup> Incentives for such unilateral competitive actions vary with the nature of competition in the relevant markets.

60. As we explain below, the market for mobile telephony service in the United States appears to be differentiated. Wireless service providers do not offer a completely homogeneous service. Rather, the service providers compete vigorously on the basis not only of price but also of other plan features, call quality, geographic coverage, and customer service. While service providers can change some of these attributes relatively quickly, others – particularly non-price attributes such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified.

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*Nextel Order*, 20 FCC Rcd at 13996 ¶¶ 73-74; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13086 ¶ 89; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21581-82 ¶¶ 154-155; and (7) presence of mavericks (*see GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.206; *DoCoMo-Guam Order*, 21 FCC Rcd at 13598 n.115; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549 n.73; *Sprint-Nextel Order*, 20 FCC Rcd at 13997-98 ¶¶ 79-80; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13087 ¶¶ 91-92; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21584-85 ¶¶ 160-162).

<sup>201</sup> See Appendix B.

<sup>202</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20320 ¶ 43; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893-94 ¶ 68; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11549-50 ¶ 46.

<sup>203</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless*, 19 FCC Rcd at 21570 ¶ 115; Application of EchoStar Communications Corporation (A Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (A Delaware Corporation) (Transferee), CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20620 ¶ 153 (2002) ("EchoStar-DirectTV HDO"); see also *DOJ/FTC Merger Guidelines* § 2.

<sup>204</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20320 ¶ 44; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14894 ¶ 69; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 ¶ 47; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 ¶ 91; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075 ¶ 54; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 ¶ 115; *DOJ/FTC Merger Guidelines* § 2.2.

<sup>205</sup> The term "unilateral" refers to the method used by firms to determine strategy, not to the fact that the merged entity would be the only firm to change its strategy. The term unilateral is used to indicate that strategies are determined unilaterally by each of the firms in the market and not by explicit or tacit collusion. Other firms in the market may find it profitable to alter their behavior as a result of the merger-induced change in market structure by, for example, repositioning their products, changing capacity, or changing their own prices. These reactions can alter the total effect on the market and must be taken into account when evaluating potential unilateral effects. See *AT&T Dobson Order*, 22 FCC Rcd at 20320 n.150; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14893 n.204; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11550 n.176; *Sprint-Nextel Order*, 20 FCC Rcd at 14001 n.199; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13076 n.155; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570 n.341.

61. In their applications, the Applicants discuss unilateral effects for the nine CMAs where, post-transaction, the combined entity would hold 70 megahertz or more of cellular and PCS spectrum.<sup>206</sup> The Applicants identify the rival service providers in these CMAs and provide details of their spectrum holdings and network coverage.<sup>207</sup> Based on their analysis of these factors, the Applicants generally argue that the response of rival service providers will be sufficient to constrain unilateral actions by the merged firm.<sup>208</sup> Further, the Applicants claim that post-transaction there would be sufficient spectrum capacity for new market entry.<sup>209</sup> The Applicants also argue that pre- and post-transaction market shares do not give rise to competitive issues; however, they do not provide any data on subscriber shares for these nine CMAs.<sup>210</sup>

62. VDPS argues that if Verizon Wireless continues to operate RCC's legacy GSM network after it finishes overlaying the RCC network with CDMA technology, it will have monopoly powers that would enable it to raise service prices or alter its behavior in other ways that would result in the degradation of Vermont's only GSM network.<sup>211</sup> In particular, given that Verizon Wireless provides nationwide mobile telephony services with CDMA technology, there is no competing GSM network in Vermont, and an existing entrant without an A- or B-block cellular license would find it difficult to support a GSM platform, VDPS argues that Verizon Wireless faces no incentive to maintain the GSM network at its current quality level or to invest in network innovations or new technology deployments.<sup>212</sup> VDPS also claims that Verizon Wireless's acquisition of RCC's cellular spectrum would give it the ability and incentive to exercise market power because of propagation characteristics that limit the substitutability of PCS spectrum for cellular spectrum in the state of Vermont.<sup>213</sup> VDPS stresses that mobile telephony service providers in Vermont face unique challenges, including higher costs per user due to low population density and a mountainous terrain that limits signal propagation.<sup>214</sup> As a result, VDPS argues that wireless carriers in Vermont depend heavily on cellular spectrum, as opposed to other types of spectrum, such as PCS, that have smaller area coverage and require many more cell sites, to achieve geographic coverage.<sup>215</sup> Therefore, competitors with only PCS licenses would not be an adequate deterrent to anticompetitive behavior by the merged entity holding cellular spectrum because for a large segment of Vermont customers the mobile telephony services provided by firms holding only PCS spectrum are not a sufficiently close substitute for the services provided by firms with access to cellular spectrum.

63. Senator Sanders asserts that, post-transaction, Verizon Wireless would become a monopoly in the provision of mobile telephony service in Vermont.<sup>216</sup> Further, Senator Sanders contends that even with Verizon Wireless's commitment to maintain the GSM network for 18 months, Vermont consumers

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<sup>206</sup> See discussion *supra* note 183 and accompanying text.

<sup>207</sup> Application, Public Interest Statement at 43-55.

<sup>208</sup> *Id.* at 40-41.

<sup>209</sup> *Id.* at 41.

<sup>210</sup> *Id.* at 42.

<sup>211</sup> VDPS Petition to Deny at 5-6; VDPS Supplement to Petition to Deny at 3.

<sup>212</sup> VDPS Petition to Deny at 6, 8-10.

<sup>213</sup> VDPS Supplement to Petition to Deny at 8-9.

<sup>214</sup> VDPS Petition to Deny at 2-4.

<sup>215</sup> *Id.* at 2, 10.

<sup>216</sup> Senator Sanders Oct. 29, 2007 Letter.

would be harmed.<sup>217</sup> Specifically, Senator Sanders argues that Verizon Wireless is unlikely to upgrade or expand RCC's GSM system, and therefore if another GSM provider were to enter the market, it would have to build the entire infrastructure from scratch.<sup>218</sup> Senator Sanders requests that Verizon Wireless agree to several conditions for acquiring RCC's licenses and business in Vermont.<sup>219</sup> The conditions that Senator Sanders proposes include: (1) Verizon Wireless to extend 100 percent geographic wireless phone coverage in Vermont within 30 months; and (2) the maintenance and expansion of the GSM network indefinitely or a requirement that the GSM assets be sold to a provider that would maintain, upgrade, and expand the GSM network.<sup>220</sup>

64. The Applicants argue that Verizon Wireless would have no more market power than RCC currently has because Verizon Wireless is merely replacing RCC as the operator of these GSM systems; therefore, its proposed acquisition of RCC's GSM network and operations would not change the competitive landscape.<sup>221</sup> In addition, the Applicants claim that VDPS's argument ignores the likelihood of a new entrant in Vermont because a substantial amount of the spectrum available for mobile telephony services in that state is already licensed to AT&T and T-Mobile, mobile telephony providers that utilize the GSM technology.<sup>222</sup> Further, the Applicants argue that Verizon Wireless has natural business and economic incentives to provide quality GSM service while it deploys a CDMA network because it will want to retain as many of its GSM customers as possible until it is ready to migrate them to CDMA.<sup>223</sup>

65. The Applicants also argue that a condition requiring Verizon Wireless to provide 100 percent geographic coverage in Vermont in 30 months is unprecedented in the context of a proposed transaction involving the merger of two entities, and in any event would be more appropriately addressed in a rulemaking.<sup>224</sup> Also, the Applicants argue that the Commission has put in place build-out rules for cellular and PCS spectrum, and that the Applicants have met those requirements.<sup>225</sup> Finally, since coverage is an important source of a mobile telephony provider's competitive advantage, Verizon Wireless has every incentive, post-transaction, to expand coverage in its markets.<sup>226</sup>

66. The results of our market-by-market analysis of the markets of concern are reported below. As indicated there, our analysis identifies three Vermont CMAs, one New York CMA, and two Washington CMAs in which the Commission is requiring business unit divestitures because of concerns that the number of competing service providers after the merger would not be sufficient to deter anticompetitive behavior by the merged entity. Regarding the three Vermont CMAs, we find that these required business unit divestitures render moot any concerns raised by VDPS or other petitioners about the potential unilateral effects of the proposed transaction in the state of Vermont. We note, however, given our finding that mobile telephony services offered by facilities-based providers using cellular, PCS, and SMR spectrum and employing various technologies offer the same basic voice and data functionality

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<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> Verizon Wireless/RCC Opposition at 11.

<sup>222</sup> *Id.* at 11-13.

<sup>223</sup> *Id.* at 16.

<sup>224</sup> *Id.* at 19.

<sup>225</sup> *Id.* at 20.

<sup>226</sup> *Id.*

and are indistinguishable to the consumer,<sup>227</sup> we base our determination whether the response of rival service providers will be sufficient to deter anticompetitive behavior by the merged entity on factors other than the number of competitors using the same technological standard.

## 2. Coordinated Effects

67. As discussed in previous wireless transaction orders, in markets where only a few firms account for most of the sales of a product, those firms may be able to exercise market power by either explicitly or tacitly coordinating their actions.<sup>228</sup> Accordingly, one way in which a transaction may create or enhance market power or facilitate its exercise is by making such coordinated interaction among firms more likely, more successful, or more complete.<sup>229</sup> Successful coordination depends on two key factors. The first is the ability to reach terms that are profitable for each of the firms involved, and the second is the ability to detect and punish deviations that would undermine the coordinated interaction.<sup>230</sup>

68. As discussed above, the Applicants provide a competitive analysis for the nine CMAs identified by the 70 megahertz spectrum aggregation screen previously employed by the Commission.<sup>231</sup> Based on this market-by-market evaluation, the Applicants assert that there is little risk of coordinated interaction in any of the nine CMAs because the overall market for mobile services is highly competitive, and the services provided are generally fungible.<sup>232</sup> The Applicants do not identify any specific constraints on the ability of the remaining competitors to reach terms of coordination or to detect and punish deviations following the transaction.<sup>233</sup>

69. The Applicants' arguments on coordinated interaction do not cause us to alter our general views on this topic, as set out in the Commission's recent wireless transaction orders.<sup>234</sup> Those views underpin the market-by-market analysis to which we now turn.

## D. Market-by-Market Evaluation

### 1. Analytical Standard

70. In this section, we undertake a granular analysis of local markets using the approach the Commission adopted in its recent wireless transaction orders.<sup>235</sup> In particular, we examine 17 CMAs

<sup>227</sup> See *supra* ¶ 48.

<sup>228</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150; *DOJ/FTC Merger Guidelines* § 0.1.

<sup>229</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20321 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 150.

<sup>230</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20321-22 ¶ 48; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14896 ¶ 77; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11554 ¶ 60; *Sprint-Nextel Order*, 20 FCC Rcd at 13995 ¶ 69; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085 ¶ 85; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580 ¶ 151; *DOJ/FTC Merger Guidelines* § 2.11.

<sup>231</sup> See discussion *supra* note 185 and accompanying text.

<sup>232</sup> Application, Public Interest Statement at 42.

<sup>233</sup> *Id.* at 43-55.

<sup>234</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20322 ¶ 50; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 62; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-01 ¶¶ 69-89; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13085-87 ¶¶ 85-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21580-86 ¶¶ 150-164.

identified by the Commission's initial screen examining both HHI market concentration and spectrum input. In undertaking this market-by-market analysis, we consider variables that the general analyses in these orders have shown are important for predicting the incentive and ability of service providers to successfully restrict competition on price or non-price terms through coordinated interaction, and the incentive and ability of the merged entity unilaterally to elevate prices or suppress output.<sup>236</sup> These include: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage of the firms' respective networks; the rival firms' market shares; the merged entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. In reaching determinations, we balance these factors on a market-specific basis, and consider the totality of the circumstances in each market.

71. Thus, for example, if our count of the number of rival service providers and our scrutiny of their spectrum holdings and network coverage indicates that the response of rival service providers will likely be sufficient to limit the ability and incentive of the combined entity to raise prices unilaterally, we would find that the transaction is not harmful to competition in a specific market even in the presence of a relatively high post-transaction market share of the combined entity.<sup>237</sup> We also scrutinize, and base our determinations on, the uniformity of competitive conditions in local markets. Thus, in some instances, we may find that the transaction is not harmful to competition in a particular market if the potential harm from the transaction is confined to a small enclave within the market, and this harm is likely to be ameliorated by the more favorable competitive conditions in most of the market.<sup>238</sup>

## 2. Result of Analysis

72. Our market-by-market analysis finds that there would be a significant likelihood of harm in the proposed transaction, either from unilateral effects or coordinated interaction, in six of the 17 CMAs identified by the initial screen. As the Commission determined in its previous wireless transaction orders, this multi-factor, market-specific analysis, which employs a combination of data sources, provides a reliable basis for making our determinations herein.<sup>239</sup>

73. For these markets, the market share and HHI information are derived from our analysis of data compiled in our NRUF database, which tracks phone number usage by all telecommunications service providers, including wireless service providers. However, our analysis does not rely solely on market shares to determine which markets are likely to experience competitive harm as a result of this

(Continued from previous page)

<sup>235</sup> See, e.g., *AT&T Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555, 11574-75 ¶ 63, App.; *Sprint-Nextel Order*, 20 FCC Rcd at 14046-14053 App. C; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13120-36 App. C, App. D; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21649 App. D.

<sup>236</sup> See, e.g., *AT&T Dobson Order*, 22 FCC Rcd at 20322 ¶ 51; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 63; *Sprint-Nextel Order*, 20 FCC Rcd at 13995-14009 ¶¶ 68-116; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13075-87 ¶¶ 54-93; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21570-86 ¶¶ 115-164.

<sup>237</sup> See, e.g., *AT&T Dobson Order*, 22 FCC Rcd at 20322-23 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13096 ¶ 118; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

<sup>238</sup> See, e.g., *AT&T Dobson Order*, 22 FCC Rcd at 20322-3 ¶ 52; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11555 ¶ 64; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

<sup>239</sup> *AT&T Dobson Order*, 22 FCC Rcd at 20323 ¶ 53; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11556 ¶ 65; *Sprint-Nextel Order*, 20 FCC Rcd at 14010 ¶ 118; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13095-96 ¶ 117; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 190.

transaction. In combination with the other factors in our multi-factor, market-specific analysis, which draws competitive conclusions based on the totality of the circumstances present in a given market, we are confident that these ranges are a reliable basis for our determinations.

74. In addition, we examine data from our LNP database through June 30, 2007. This information includes each instance of a customer porting a phone number from one mobile carrier to another, and indicates both the origin and destination carrier.<sup>240</sup> We also analyze carrier launch and coverage information available from a variety of public sources, as well as information regarding spectrum holdings, which we obtained from our licensing databases and from the Application.

75. *Divestitures Proposed by Verizon Wireless.* In a December 5, 2007, filing with the Commission, Verizon Wireless states that it had made a commitment to DOJ to divest RCC's cellular spectrum and associated networks where there is overlap with Verizon Wireless's cellular networks, including in the state of Vermont. Verizon Wireless also claims that once these divestitures are completed, Verizon Wireless would not be an exclusive provider of GSM services in the overwhelming majority of the state of Vermont.<sup>241</sup> However, Verizon Wireless notes that these proposed divestitures would result in Verizon Wireless retaining RCC's cellular system in the southern half of the Vermont 2-Addison CMA.<sup>242</sup> Verizon Wireless claims that no competitive harms would result from it retaining RCC's cellular spectrum in certain counties in the Vermont 2-Addison CMA because it would be competing head-to-head with the other cellular service provider, U.S. Cellular, in this area.<sup>243</sup> Further, Verizon Wireless claims that in the Vermont 2-Addison CMA, it would continue to provide GSM service until another GSM provider begins to offer service.<sup>244</sup>

76. VDPS argues that the proposed divestitures do not ameliorate its concerns because the divestiture plans: (1) were not formalized; (2) did not ensure the continued operation and maintenance of a GSM system in Vermont; and (3) did not ensure the continuation of a GSM network in three counties in the Vermont 2-Addison CMA.<sup>245</sup> Joint Petitioners argue that a full divestiture of RCC's cellular system in the Vermont 2-Addison CMA would ensure the integrity of the GSM network, while permitting Verizon Wireless to continue to build out its CDMA network in the market.<sup>246</sup>

77. In light of the agreement reached with DOJ, Verizon Wireless states that the DOJ Final Judgment requires that it divest all of RCC's cellular spectrum and network in Vermont. This divestiture includes not only the three Vermont CMAs but also CMA560 New York 2-Franklin, and these must be sold to a single buyer.<sup>247</sup> Further, until these properties are transferred to a buyer, they will be maintained

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<sup>240</sup> This data was provided to the Commission by NeuStar.

<sup>241</sup> Verizon Wireless made a commitment to DOJ to divest RCC's cellular spectrum and network in Vermont to AT&T, a GSM mobile telephony service provider. Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1; Verizon Wireless/RCC Opposition at 11-12; Letter from Nancy J. Victory, Counsel, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte*, WT Docket No. 07-208, at 2 (filed June 11, 2008) ("Verizon Wireless June 11, 2008 *Ex Parte* Filing").

<sup>242</sup> Verizon Wireless/RCC Opposition at 12, 18-19; Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1, 3; Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2.

<sup>243</sup> Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 3.

<sup>244</sup> Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1, 3.

<sup>245</sup> VDPS Reconsideration Comments at 3-4.

<sup>246</sup> Joint Petitioners Reply at 5-6.

<sup>247</sup> Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2-3.

by a management trustee.<sup>248</sup> Therefore, according to Verizon Wireless, the divestiture as proposed in the Final Judgment ameliorates any concerns raised by VDPS.<sup>249</sup>

78. *Specific Markets in Which Competitive Harm Is Likely.* We list below the six markets in which our case-by-case analysis indicates that competitive harm is likely as a result of this transaction. A detailed discussion of these markets is contained in Appendix C. As we did in the *Cingular-AT&T Wireless Order*, we find that, in any market in which the transaction would reduce the number of genuine competitors to four or fewer, the proposed transaction may result in a significant likelihood of successful unilateral effects and/or coordinated interaction.<sup>250</sup> The following six markets, which are the markets where we are requiring business unit divestitures, represent all the markets in which the acquisition will reduce the number of genuine competitors to four or fewer. In fact, in three of these six markets, the number of fully constructed operators will be reduced from two to one.<sup>251</sup> In all six of these markets, we expect that the post-transaction market share of the combined entity likely would make it profitable for the entity to raise price and restrict output. Further, the presence and capacity of rival service providers, taking into account near-term opportunities to obtain access to additional spectrum, are such that the response of rival service providers is likely to be insufficient to deter such unilateral actions.

79. Most of these six markets are smaller markets with high market shares for the merged entity and few competing service providers. In these markets, we are concerned that, post-transaction, competing service providers would not be sufficiently numerous to deter anticompetitive behavior by the merged entity.<sup>252</sup>

CMA	Name
CMA248	Burlington, Vermont
CMA560	New York 2 - Franklin
CMA679	Vermont 1 - Franklin
CMA680	Vermont 2 - Addison
CMA694	Washington 2 - Okanogan
CMA695	Washington 3 - Ferry

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21595 ¶ 191.

<sup>251</sup> For purposes of this determination, we define fully built-out as having coverage of at least 70% of the population in the CMA. See Appendix B.

<sup>252</sup> Application of the initial screen on a CEA basis shows that no potential markets of concern are identified that are not also identified by CMA application of the screen. For convenience, we limit our discussion of the markets of concern to CMAs because, upon completing our competitive analysis, we find that the most exact divestiture area to eliminate concerns of competitive harm would be CMAs. Therefore, we undertake our in-depth analysis on the basis of CMA areas only.

## E. Roaming

### 1. Background

80. *Background.* VDPS, the Joint Petitioners, and Senator Sanders each raise concerns about the potential for the transaction to have an adverse impact on roaming arrangements and request that the Commission prevent such adverse outcomes by imposing certain conditions on the transaction.

81. Roaming occurs when the subscriber of one CMRS provider travels beyond the service area of that provider and utilizes the facilities of another CMRS provider to place an outgoing call, to receive an incoming call, or to continue an in-progress call.<sup>253</sup> Subscribers can roam manually by providing a credit card number to the host carrier, while automatic roaming allows mobile telephone subscribers to place calls while roaming as they do in their home coverage area, by simply entering a phone number and pressing “send.” The provision of roaming is subject to the requirements of sections 201, 202, and 208 of the Communications Act.<sup>254</sup> In August 2007, the Commission determined that when “a reasonable request is made by a technologically compatible [commercial mobile radio service] carrier, a host [commercial mobile radio service] carrier must provide automatic roaming to the requesting carrier outside of the requesting carrier’s home market . . .”<sup>255</sup> on reasonable and non-discriminatory terms and conditions.<sup>256</sup> The Commission also said that if a carrier makes a reasonable request for automatic roaming, “then the would-be host carrier cannot refuse to negotiate an automatic roaming agreement with the requesting carrier.”<sup>257</sup> At the same time, the Commission maintained its existing manual roaming requirement, which imposes on CMRS providers the obligation to permit customers of other service providers to roam manually on their networks.<sup>258</sup>

82. VDPS states that RCC is effectively the sole operator of a GSM network in the state of Vermont, since GSM operator T-Mobile operates only one cell site in the state.<sup>259</sup> VDPS argues that, as a result of the proposed transaction, Verizon Wireless would control Vermont’s only GSM network, and therefore would be able to “extract high rents from GSM service providers that require roaming

<sup>253</sup> See *AT&T Dobson Order*, 22 FCC Rcd at 20324 ¶ 59; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14901 ¶ 91; *DoCoMo-Guam Order*, 21 FCC Rcd at 13600 ¶ 33; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11561-62 ¶ 98; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13090 ¶ 101; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21586 ¶ 166; see also *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Service*, WT Docket No. 05-265, 00-193, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) (“*Roaming Notice*”).

<sup>254</sup> *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15818 ¶ 1 (2007) (“*Roaming Report and Order*”).

<sup>255</sup> *Id.* at 15818 ¶ 2; see also *id.* at 15831 ¶ 33.

<sup>256</sup> *Id.* at 15826 ¶ 23.

<sup>257</sup> *Id.* at 15828 ¶ 28.

<sup>258</sup> 47 C.F.R. § 20.12(c) provides:

Each carrier subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this section, including roamers, while such subscribers are located within any portion of the licensee’s licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee’s base stations.

<sup>259</sup> VDPS Petition to Deny at 5.

arrangements in order to provide service to their customers traveling through Vermont.”<sup>260</sup> Also, VDPS and Senator Sanders claim that, because the Applicants intend to overlay RCC’s GSM network with CDMA technology and then discontinue RCC’s GSM network, the proposed transaction threatens the quality of and other mobile telephony service providers’ access to Vermont’s only GSM network and the availability of mobile service to Vermont vacationers and business travelers with GSM handsets.<sup>261</sup> VDPS further argues that Verizon Wireless’s divestiture commitment to DOJ does not allay these concerns because it is limited to divestiture of RCC’s cellular operations in any Vermont market where RCC and Verizon Wireless have overlapping cellular operations, and excludes divestiture of RCC’s cellular operations in several counties (Bennington, Windham, and southern Windsor) in the Vermont 2-Addison CMA, where Verizon Wireless holds PCS rather than cellular spectrum licenses.<sup>262</sup> Since RCC is the only GSM service provider in these counties, VDPS maintains that if Verizon Wireless were to acquire RCC’s cellular licenses and convert them to CDMA technology in these markets, GSM handsets would no longer work in this part of Vermont.<sup>263</sup> Further, the unavailability of cellular spectrum would make it extremely difficult for a competitor to acquire suitable spectrum needed to reintroduce GSM to those counties.<sup>264</sup>

83. Based on these concerns, VDPS requests that the Commission condition its approval of the transaction on the divestiture of all of RCC’s spectrum licenses in Vermont, with the divestiture structured in a manner that preserves Vermont’s existing GSM network.<sup>265</sup> If the Commission does not condition its approval on divestiture of RCC’s spectrum licenses in the Vermont CMAs, VDPS requests that the Commission condition its approval on the requirement that Verizon Wireless maintain the existing GSM network in Vermont at the current level of investment for a period of at least six years.<sup>266</sup> In the absence of either of these conditions, VDPS requests that the Commission deny the applications for the transfer of control of licenses held by RCC and its subsidiaries to Verizon Wireless.<sup>267</sup>

84. The Joint Petitioners address their comments on roaming to southern Vermont, where Verizon Wireless’s divestiture commitment contemplates retention of RCC’s cellular licenses, with Verizon Wireless continuing to operate the GSM network built by RCC until a GSM operator begins to offer service in such areas.<sup>268</sup> The Joint Petitioners claim that Verizon Wireless would begin to transition the cellular spectrum to CDMA once a GSM operator begins to offer service in these markets. The Joint Petitioners argue that roamers who use GSM handsets would be harmed because Verizon Wireless “has no obvious incentive to properly maintain, upgrade, or expand the GSM network” in these markets.<sup>269</sup> The Joint Petitioners also argue that, if Verizon Wireless were to acquire RCC’s GSM network, it would have a monopoly on the GSM network, and therefore would be able to set monopoly prices for GSM

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<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 14; VDPS Supplement to Petition to Deny at 3-4; Vermont PIRG Extension Motion at 2-3; Senator Sanders Oct. 29, 2007 Letter; Senator Sanders Nov. 20, 2007 Letter.

<sup>262</sup> VDPS Reconsideration Comments at 3-4.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*; VDPS Petition to Deny at 10.

<sup>265</sup> VDPS Supplement to Petition to Deny at 4, 14-15.

<sup>266</sup> *Id.* at 4.

<sup>267</sup> *Id.* at 4.

<sup>268</sup> Joint Petitioners Petition to Deny at 4.

<sup>269</sup> *Id.*

roaming rates.<sup>270</sup> In markets where Verizon Wireless would control the only GSM network, the Joint Petitioners request that the Commission condition its approval of the transaction on one of the following requirements: (1) divestiture of the spectrum and GSM network to a competitor offering GSM service; or (2) an agreement by Verizon Wireless to maintain, upgrade, and expand the GSM service for as long as competitors and roamers could use it, or a period of six years, whichever is longer.<sup>271</sup> In addition, the Joint Petitioners and Senator Sanders request that the Commission require Verizon Wireless to commit to provide automatic roaming services at reasonable rates to other GSM and CDMA carriers.<sup>272</sup>

85. The Applicants argue that there is no basis for conditioning the approval of the transaction on either the divestiture of all of RCC's GSM systems to a GSM carrier, or a requirement that Verizon Wireless maintain the GSM network built by RCC for a period of six years or indefinitely.<sup>273</sup> Further, the Applicants argue that Verizon Wireless's acquisition of RCC's GSM network and operations does not change the competitive landscape in Vermont because Verizon Wireless is merely replacing RCC as the operator of these systems, and therefore Verizon Wireless will have no more power to set anticompetitive roaming rates than RCC currently possesses.<sup>274</sup> The Applicants also argue that the Commission should not, in the context of this proposed transaction, require Verizon Wireless to provide automatic roaming at reasonable rates to other service providers because the Commission has already established roaming rules that are applicable to all CMRS providers and Verizon Wireless will comply with these rules.<sup>275</sup>

86. With respect to the proposed requirement that Verizon Wireless preserve the GSM network, the Applicants claim that Verizon Wireless has already committed, on the record, to providing GSM service in the southern portion of the Vermont 2-Addison CMA where it currently does not have cellular operations until a GSM provider is operational and offering service in this area. Therefore, post-transaction, there would be at least one GSM competitor providing mobile telephony service if Verizon Wireless ceases to operate the GSM network acquired from RCC.<sup>276</sup> Contrary to the allegation that Verizon Wireless would have an incentive to allow the GSM network to atrophy and service quality to deteriorate, the Applicants argue that Verizon Wireless would have the incentive to continue to maintain and improve the GSM network in order to retain as many of its GSM customers as possible until it is able to transition these customers to its CDMA network.<sup>277</sup> The Applicants further claim that RCC derives significant GSM roaming revenues from its Vermont properties and it is not in Verizon Wireless's economic interest to reduce this revenue stream by allowing the GSM network to fall into disrepair.<sup>278</sup> Moreover, since AT&T already has spectrum in the retained portion of the Vermont 2-Addison CMA, the Applicants contend that AT&T would have strong incentives to build out the southern portion of the Vermont 2-Addison CMA in order to offer services to customers in other parts of the state where it is acquiring RCC's cellular operations. The Applicants also contend that Verizon Wireless's commitment

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<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 9.

<sup>272</sup> Senator Sanders Oct. 29, 2007 Letter at 3; Joint Petitioners Petition to Deny at 9.

<sup>273</sup> Verizon Wireless/RCC Opposition at 11-18, 22-23.

<sup>274</sup> *Id.* at 11.

<sup>275</sup> *Id.* at 22-23.

<sup>276</sup> *Id.* at 16, 18.

<sup>277</sup> *Id.* at 16.

<sup>278</sup> *Id.* at 16-17.

to grant AT&T access to tower sites owned and retained by Verizon Wireless in the southern portion of the Vermont 2-Addison CMA should facilitate and speed this build-out process.<sup>279</sup>

87. The Applicants also argue that the Commission has consistently and steadfastly maintained that it is not appropriate for the agency to mandate use of a particular technology, and note that the Commission has rejected attempts by opponents to require the preservation of a particular technology platform for roaming in several prior transactions.<sup>280</sup> The Applicants contend that requiring Verizon Wireless to maintain the GSM platform in this area for six more years would clearly be contrary to the public interest because the CMRS industry is characterized by rapid technological change, and given that national GSM carriers have already begun to transition their systems to the next wideband CDMA standard in the GSM evolutionary path, locking in a technology that is sure to become outdated over time would severely disadvantage customers in this region.<sup>281</sup> Finally, the Applicants claim that the required divestitures detailed in the DOJ Final Judgment resolve concerns that subscribers with GSM handsets that roam on RCC's network in Vermont would lose roaming once Verizon converted the network to CDMA technology.<sup>282</sup>

## 2. Discussion

88. The Commission has previously found that competition in the retail market is sufficient to protect consumers against potential harm arising from intercarrier roaming arrangements and practices.<sup>283</sup> As discussed elsewhere in this Order, we find that the proposed transaction would be likely to cause significant competitive harm in a limited number of geographic markets, and that a package of divestitures of licenses and related network assets on which we are conditioning our grant of authority to transfer control of licenses from RCC to Verizon Wireless is sufficient to prevent competitive harm in those markets. Because the divestitures will protect competition at the retail level in those geographic markets, we conclude that the transaction will not alter competitive market conditions in such a way as to harm consumers of mobile telephony services, including roaming services. Accordingly, we decline to condition our approval of the transaction on any special requirements relating to roaming rates or arrangements, including a requirement to maintain RCC's GSM network for a specified period of time in certain markets.

89. We further note that the markets in which we are requiring divestitures of RCC's spectrum and operations include the counties in the Vermont 2-Addison CMA where Verizon Wireless holds PCS licenses rather than cellular licenses. We emphasize, however, that the need for divestiture in this CMA, as well the other markets identified in our competitive analysis, is based on the potential for the transaction to cause competitive harm due to a reduction in the number of competitors in general, and not on any potential for the transaction to have an adverse effect on roaming arrangements, in particular through its impact on GSM roaming rates, the continuation of the GSM network, or the quality of GSM service.<sup>284</sup>

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<sup>279</sup> *Id.* at 6, 17.

<sup>280</sup> *Id.* at 14-15; Verizon Wireless June 11, 2008 *Ex Parte* Filing at 2.

<sup>281</sup> Verizon Wireless/RCC Opposition at 15.

<sup>282</sup> Verizon Wireless June 11, 2008 *Ex Parte* Filing at 1.

<sup>283</sup> See *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21591 ¶ 180; *Roaming Report and Order*, 22 FCC Rcd at 15822 ¶ 13; see also *DoCoMo-Guam Order*, 21 FCC Rcd at 13602 ¶ 36; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11563-64 ¶ 104.

<sup>284</sup> We note that it is a long-standing principle of the Commission not to dictate licensees' technology choices. See, e.g., *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

90. In addition, we emphasize that the clarifications and the obligations adopted in our *Roaming Report and Order* were intended to address concerns expressed by certain service providers that other providers would deny reasonable requests for an automatic roaming agreement or charge unreasonable or discriminatory roaming rates, and that those obligations will continue to apply squarely to Verizon Wireless after the closing of this transaction.<sup>285</sup> As stated in the *Roaming Report and Order*, automatic roaming is a common carrier service, and the provisioning of automatic roaming service is subject to the requirements of section 201, 202, and 208 of the Communications Act.<sup>286</sup> Accordingly, all charges and practices by CMRS service providers in connection with roaming services must be just and reasonable. Section 208 provides that complaints may be filed with the Commission against common carriers subject to the Communications Act.<sup>287</sup> As noted in the *Roaming Report and Order*, we intend to address roaming related complaints expeditiously on a case-by-case basis.<sup>288</sup>

#### **F. Public Interest Benefits**

91. In addition to assessing the potential competitive harms of the proposed Verizon Wireless-RCC transaction, we also consider whether the respective combination of these companies' wireless operations is likely to generate verifiable, transaction-specific public interest benefits.<sup>289</sup> In doing so, we ask whether the resulting combined entity would be able, and would be likely, to pursue business strategies resulting in demonstrable and verifiable benefits to consumers that would not be pursued but for the combination.<sup>290</sup>

92. As discussed below, we find that the proposed transaction is likely to result in certain transaction-specific public interest benefits. We reach this conclusion recognizing that many of these benefits may be challenging to achieve in the near future because of sizable technological and financial requirements. As a result, it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits will be realized.<sup>291</sup>

#### **1. Analytical Framework**

93. The Commission has recognized that "[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."<sup>292</sup> Under

<sup>285</sup> *Roaming Report and Order*, 22 FCC Rcd at 15828-29 ¶ 28.

<sup>286</sup> *Id.* at 15818 ¶ 1.

<sup>287</sup> See 47 U.S.C. § 208.

<sup>288</sup> *Roaming Report and Order*, 22 FCC Rcd at 15829-30 ¶¶ 30-31.

<sup>289</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>290</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 73; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 200; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

<sup>291</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 74; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 110; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 40.

<sup>292</sup> E.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20330 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41; (continued....)

Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.<sup>293</sup>

94. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms. First, the claimed benefit must be transaction- or merger-specific. This means that the claimed benefit “must be likely to be accomplished as a result of the merger but unlikely to be realized by other means that entail fewer anticompetitive effects.”<sup>294</sup> Second, the claimed benefit must be verifiable. Because much of the information relating to the potential benefits of a merger is in the sole possession of the applicants involved in such a transaction, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.<sup>295</sup> In addition, as the Commission has noted, “the magnitude of benefits must be calculated net of the cost of achieving them.”<sup>296</sup> Furthermore, as the Commission has previously explained, “benefits that are to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the more distant future are inherently more speculative than

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*ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>293</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20330-31 ¶ 75; *AT&T-BellSouth Order*, 22 FCC Rcd at 5760-61 ¶ 201; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 111; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603 ¶ 41; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 107; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 183; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 194; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 135; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 204.

<sup>294</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13603-04 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599-600 ¶ 205; *accord EchoStar-DirecTV HDO*, 17 FCC Rcd at 20630 ¶ 189; Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, *Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063-64 ¶ 158 (“Pro-competitive efficiencies include only those efficiencies that are merger-specific, i.e., that would not be achievable but for the proposed merger. Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.”); Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, CC Docket No. 98-141, *Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14825 ¶ 255 (“Public interest benefits also include any cost saving efficiencies arising from the merger if such efficiencies are achievable only as a result of the merger . . .”). Cf. *DOJ/FTC Merger Guidelines* § 4.

<sup>295</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14909-10 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564-65 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18384-85 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

<sup>296</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18530-31 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13101-02 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205.

predictions about events that are expected to occur closer to the present.”<sup>297</sup> Third, the Commission has stated that it “will more likely find marginal cost reductions to be cognizable than reductions in fixed cost.”<sup>298</sup> The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.<sup>299</sup>

95. Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.<sup>300</sup> Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”<sup>301</sup> On the other hand, where potential harms appear less likely and less substantial, as in this case, we will accept a lesser showing to approve the transaction.<sup>302</sup>

<sup>297</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20331 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205 (citing *EchoStar-DirectTV HDO*, 17 FCC Rcd at 20630 ¶ 190).

<sup>298</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20331-32 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 136; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 205. See also *DOJ/FTC Merger Guidelines* § 4.

<sup>299</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 76; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 202; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 112; *DoCoMo-Guam Order*, 21 FCC Rcd at 13604 ¶ 42; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 108; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 184; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195; *Sprint-Nextel Order*, 20 FCC Rcd at 14014 ¶ 130; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206; see also *DOJ/FTC Merger Guidelines* § 4.

<sup>300</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206.

<sup>301</sup> *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5671-72 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11565-66 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 196; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13102 ¶ 137; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21600 ¶ 206. Cf. *DOJ/FTC Merger Guidelines* § 4 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

<sup>302</sup> See, e.g., *AT&T-Dobson Order*, 22 FCC Rcd at 20332 ¶ 77; *AT&T-BellSouth Order*, 22 FCC Rcd at 5672 ¶ 203; *GCI-Alaska DigiTel Order*, 21 FCC Rcd at 14910 ¶ 113; *DoCoMo-Guam Order*, 21 FCC Rcd at 13605 ¶ 43; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11566 ¶ 109; *SBC-AT&T Order*, 20 FCC Rcd at 18385 ¶ 185; *Verizon-MCI Order*, 20 FCC Rcd at 18531 ¶ 195.

## 2. Discussion

96. The Applicants assert that a number of public interest benefits would result from the proposed Verizon Wireless-RCC transaction.<sup>303</sup> They contend that the proposed transaction would provide substantial benefits for existing RCC customers and existing and future Verizon Wireless customers.<sup>304</sup> First, the Applicants note that this transaction would expand Verizon Wireless's wireless footprint.<sup>305</sup> Second, the increased resources would enable Verizon Wireless to increase broadband deployment and network access.<sup>306</sup> Third, the proposed transaction would allow the combined entity to provide higher quality service.<sup>307</sup> Fourth, the Applicants maintain that the combined entity would increase efficiency and achieve economies of scale and scope.<sup>308</sup> Finally, they argue that the proposed transaction would strengthen Verizon Wireless as a competitor in the wireless telecommunications marketplace.<sup>309</sup>

97. According to the Applicants, approval of the proposed transaction will benefit RCC's customers by giving them improved quality of service through upgraded networks and greater choice of wireless services (especially broadband data), devices, and rate plans, and improved customer service.<sup>310</sup> According to the Applicants, Verizon Wireless customers will enjoy the expansion of network access and wireless broadband services, cost savings through increased efficiencies, and greater economies of scale.<sup>311</sup>

### a. Increased Wireless Footprint and Network Coverage

98. The Applicants emphasize that completion of the transaction will expand Verizon Wireless's licensed footprint into all or portions of 30 new cellular market areas where the company currently has no cellular or PCS spectrum.<sup>312</sup> Specifically, the Applicants state that the proposed transaction will enable Verizon Wireless to enter eight new CMAs<sup>313</sup> and portions of twenty-two other CMAs<sup>314</sup> where Verizon Wireless currently holds no cellular or PCS spectrum.<sup>315</sup>

<sup>303</sup> Application, Public Interest Statement at 8-26.

<sup>304</sup> *Id.* at 9-26; Verizon Wireless/RCC Opposition at 4.

<sup>305</sup> Application, Public Interest Statement at 13-14; Verizon Wireless/RCC Opposition at 4-7.

<sup>306</sup> Application, Public Interest Statement at 20-22.

<sup>307</sup> *Id.* at 11-13; Verizon Wireless/RCC Opposition at 4.

<sup>308</sup> Application, Public Interest Statement at 22-24.

<sup>309</sup> *Id.* at 24-26.

<sup>310</sup> *Id.* at 11-13.

<sup>311</sup> *Id.* at 13-14, 20-24.

<sup>312</sup> *Id.* at 9; Verizon Wireless/RCC Opposition at 5.

<sup>313</sup> These markets include Kansas 2 - Norton (CMA429); Kansas 7 - Trego (CMA434); Kansas 11 - Hamilton (CMA438); Kansas - 12 (Hodgeman (CMA439); Kansas 13 - Edwards (CMA440); Minnesota 3 - Koochiching (CMA484); Minnesota 9 - Pipestone (CMA490); and South Dakota 4 - Marshall (CMA637). Application, Public Interest Statement at 9 n.21.

<sup>314</sup> These markets include Alabama 3 - Lamar (CMA309); Alabama 4 - Bibb (CMA310); Alabama 5 - Cleburne (CMA311); Alabama 7 - Butler (CMA313); Georgia 14 - Worth (CMA384); Kansas 1 - Cheyenne (CMA428); Kansas 6 - Wallace (CMA433); Maine 2 - Somerset (CMA464); Minnesota 2 - Lake of the Woods (CMA483); Minnesota 5 - Wilkin (CMA486); Minnesota 6 - Hubbard (CMA487); Minnesota 7 - Chippewa (CMA488); Minnesota 8 - Lac qui Parle (CMA489); Minnesota 10 - Le Sueur (CMA491); Mississippi 2 - Benton (CMA494); Mississippi 3 - Bolivar (CMA495); Mississippi 4 - Yalobusha (CMA496); Mississippi 6 - Montgomery (CMA498); (continued....)

99. According to the Applicants, the transaction will provide Verizon Wireless access to areas – particularly rural areas – in which it is not currently providing service.<sup>316</sup> The Applicants state that these new areas will provide a larger, seamless national footprint for subscribers and allow Verizon Wireless to implement more continuous coverage of major routes between cities and these areas.<sup>317</sup>

100. As a result of the transaction, the Applicants stipulate that Verizon Wireless will integrate RCC's analog, GSM, TDMA, CDMA networks into Verizon Wireless's existing operations over a period of about 18 months.<sup>318</sup> Given the compatibility of RCC's CDMA network equipment with Verizon Wireless's existing CDMA network, the Applicants state that Verizon Wireless will be able to undertake a rapid and smooth integration of these two networks where RCC has existing CDMA coverage.<sup>319</sup> Following this integration, the Applicants contend that RCC's customers will enjoy seamless wireless coverage throughout Verizon Wireless's entire footprint.<sup>320</sup> In addition, the Applicants emphasize that the services that customers enjoy within their home markets will be available to them as they travel throughout the country.<sup>321</sup> Further, the Applicants state that the transaction will enable RCC customers for the first time to utilize their mobile phones when traveling internationally.<sup>322</sup> The Applicants indicate that at present RCC does not permit its subscribers to roam on other networks outside of the United States, but that Verizon Wireless has roaming agreements in thirty-three countries that permit subscribers to use their mobiles while on travel.<sup>323</sup> The Applicants believe the ability to roam internationally will be a substantial benefit to existing RCC subscribers.<sup>324</sup>

**b. Promotion and Deployment of Broadband and Next Generation Services**

101. The Applicants argue that the proposed transaction will benefit Verizon Wireless's existing and future customers by expanding the area in which Verizon Wireless can offer wireless broadband services.<sup>325</sup> Specifically, they contend that RCC holds spectrum and provides service in eight rural CMAs where Verizon Wireless does not currently hold either 800 MHz cellular or 2 GHz PCS spectrum.<sup>326</sup> In addition, they assert that RCC holds spectrum in parts of twenty-two other rural CMAs

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Mississippi 7 - Leake (CMA499); Mississippi 10 - Smith (CMA502); Oregon 3 - Umatilla (CMA608); and Wisconsin 2 - Bayfield (CMA709). RCC is operational in all of these expansion areas except the counties in Mississippi 7 - Leake. Application, Public Interest Statement at 9 n.22.

<sup>315</sup> Application, Public Interest Statement at 9.

<sup>316</sup> *Id.* at 20-21; Verizon Wireless/RCC Opposition at 5.

<sup>317</sup> Application, Public Interest Statement at 20-21.

<sup>318</sup> *Id.* at 13-14.

<sup>319</sup> While the AMPS standard for analog systems would allow rapid integration of RCC and Verizon Wireless analog systems, Verizon Wireless had announced that it would retire its analog systems on February 18, 2008. *Id.* at 13 n.31.

<sup>320</sup> *Id.* at 14.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.* at 20.

<sup>326</sup> See *supra* note 313.

where Verizon Wireless lacks complete 800 MHz or 2 GHz license coverage.<sup>327</sup> They also assert that increasing Verizon Wireless' coverage footprint by integrating RCC's CDMA operations in areas where Verizon Wireless does not currently operate will enhance Verizon Wireless ability to deploy new services in areas where its coverage overlaps with RCC.<sup>328</sup>

102. Further, the Applicants state that the proposed transaction would increase Verizon Wireless's spectrum capacity in markets where Verizon Wireless already provides service, which will allow Verizon Wireless to better support the increasing demand for broadband services and applications.<sup>329</sup> The Applicants point out that RCC has network assets – including both spectrum and radio towers – that can be incorporated into the Verizon Wireless network.<sup>330</sup> They argue that additional towers and transmitting facilities could enhance Verizon Wireless's signal strength in some areas and enable better allocation of network resources in others.<sup>331</sup> Even more important, they state, is the fact that the additional spectrum held by RCC in particular markets will allow Verizon Wireless to deploy new wireless broadband services, and, in other areas, to enhance existing capacity.<sup>332</sup> The Applicants emphasize that greater spectrum availability translates into faster broadband access.<sup>333</sup>

### c. Improvements in Service Quality

103. *Networks and Wireless Services.* The Applicants state that RCC's customers currently do not enjoy the third generation wireless broadband services that Verizon Wireless customers experience from Verizon Wireless's EvDO network,<sup>334</sup> which has been upgraded to utilize EvDO Rev. A technology.<sup>335</sup> In areas where it offers GSM service, RCC has only recently announced plans to upgrade its network to EDGE technology, which is far slower in throughput speed than EvDO Rev. A.<sup>336</sup> In CDMA areas, RCC offers only EDGE technology, which generally provides peak data rates of 473.6 kb/s – over sixty times slower than Verizon Wireless's EvDO Rev. A network.<sup>337</sup> Following consummation of the transaction, the Applicants state that RCC customers will have access to a broader range of mobile

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<sup>327</sup> See *supra* note 314.

<sup>328</sup> Application, Public Interest Statement at 21-22.

<sup>329</sup> *Id.* at 9.

<sup>330</sup> *Id.* at 21.

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> The Applicants state that this network enables customers to access BroadbandAccess™ on their laptops, e-mail on their PDAs, and Verizon Wireless's VCast™ Video and Music services on their wireless phones. *Id.* at 12. See also Verizon Wireless/RCC Opposition to Extension Motion at 4.

<sup>335</sup> See Verizon Wireless News Center, 100 Percent of Wireless Broadband Network Now Enhanced With Faster Speeds, <http://news.vzw.com/news/2007/06/pr2007-06-28h.html> (last visited Aug. 27, 2007). According to the Applicants, the use of EvDO Rev. A technology allows Verizon Wireless's customers to access wireless services and to download files as much as ten times faster than customers of other wireless service providers who rely on different network technologies. Application, Public Interest Statement at 12 n.29. See also Verizon Wireless/RCC Opposition at 4 n.10.

<sup>336</sup> Application, Public Interest Statement at 11 n.25 ("Verizon Wireless's EvDO Rev. A network provides data rates of up to 3.1 Mbit/s, as compared to RCC's recently announced EDGE technology, which has a theoretical maximum rate of 473.6 kbit/s using all 8 timeslots."). See also Verizon Wireless/RCC Opposition at 4 n.10.

<sup>337</sup> See Verizon Wireless/RCC Opposition at 4 n.10.

music, video, television and other multimedia services offered by Verizon Wireless.<sup>338</sup> The Applicants indicate that currently RCC subscribers are restricted by the more limited capabilities of RCC's networks and its on-going capital constraints.<sup>339</sup> In contrast, the Applicants stress Verizon Wireless offers its customers the latest in business information, entertainment, and gaming services and content.<sup>340</sup> According to the Applicants, after completion of the transaction, RCC's customers will be able to use mobile phones and laptop computers to access internet-enabled applications, graphics for 3D games, music, full-featured mobile video, video on demand, and TV.<sup>341</sup> Further, the Applicants indicate that the EvDO Rev. A network makes possible new mobile emergency and safety applications, such as remote patient monitoring and mobile robotics.<sup>342</sup> Services and products are also available to support vehicle assistance capabilities through VZNavigator in the form of maps and turn-by-turn directions.<sup>343</sup>

104. *Wireless Devices.* The Applicants state that the transfer of control of RCC to Verizon Wireless will permit RCC's customers to gain access to a broader array of wireless devices. According to the Applicants, RCC's customers currently have access to 11 models of phones, one Smartphone, and one PC card. After the transaction, the Applicants state that RCC's customers will be able to choose from among 42 models of phones, 11 PDA/Smartphones or Blackberry devices, and 7 PC cards – a selection of phones that includes a broad array of Hearing Aid Compatible ("HAC") compliant devices.<sup>344</sup> These wireless devices include devices that take advantage of the faster speeds provided by Verizon Wireless's EvDO Rev. A network.<sup>345</sup>

105. *Service Plans.* The Applicants emphasize that after completion of the transfer, RCC's subscribers will be able to choose from a wide variety of service plans.<sup>346</sup> The Applicants indicate that Verizon Wireless offers a variety of service plans with data bundles and packaged offerings and that all of Verizon Wireless service plans include unlimited nights and weekends and unlimited mobile-to-mobile minutes.<sup>347</sup> By contrast, the Applicants indicate that RCC's service plans offer only limited night and weekend minute bundles and that only certain plans offer unlimited mobile-to-mobile minutes.<sup>348</sup>

106. *Customer Service.* Finally, the Applicants indicate that RCC's customers will benefit from better customer service, and they point out that Verizon Wireless offers customer service and product support for Spanish-speaking customers in its call centers.<sup>349</sup> Further, the Applicants contend that

<sup>338</sup> Application, Public Interest Statement at 16-17; *see also* Verizon Wireless/RCC Opposition at 4.

<sup>339</sup> Application, Public Interest Statement at 16. They support this contention by pointing out that Verizon Wireless has invested \$37 billion in the last seven years to increase the coverage and capacity of its network and to add new services. *Id.* at 11.

<sup>340</sup> *Id.* at 16.

<sup>341</sup> Applicants assert that RCC's subscribers will be able to access ESPN video clips, YouTube, CBS, Comedy Central, Fox, MTV, NBC News, NBC Entertainment and Nickelodeon, ABC News Now, Fox Sports, Country Music Television, Just for Laughs, CNN to Go, ET to Go, the Wall Street Journal, AccuWeather.com, The Weather Channel, Sesame Street, Maxim, Atom Films, and Heavy.com. *Id.* at 16-17.

<sup>342</sup> *Id.* at 12.

<sup>343</sup> *Id.* at 12-13.

<sup>344</sup> *Id.* at 17-18; Verizon Wireless/RCC Opposition at 4-5.

<sup>345</sup> Application, Public Interest Statement at 18.

<sup>346</sup> *Id.* at 18-19; Verizon Wireless/RCC Opposition at 4.

<sup>347</sup> Application, Public Interest Statement at 18-19.

<sup>348</sup> *Id.* at 18.

<sup>349</sup> *Id.* at 15-16; Verizon Wireless/RCC Opposition at 4.

RCC's customers will also benefit from the ability to terminate service during the term of a contract.<sup>350</sup> The Applicants indicate that Verizon Wireless prorates early termination fees.<sup>351</sup>

**d. Efficiencies and Economies of Scale and Scope**

107. In addition, the Applicants state that the proposed transaction will result in operational synergies including roaming expense savings, elimination of redundant facilities, and a reduction in sales, general, administrative, marketing, and customer service costs.<sup>352</sup> Applicants also note that Verizon Wireless has technical expertise, financial resources, and economies of scope and scale that would benefit of RCC's customers.<sup>353</sup> According to the Applicants, RCC and Verizon Wireless are preferred roaming partners on each others' CDMA networks, so that RCC CDMA subscribers will generally roam on Verizon Wireless systems out-of-region.<sup>354</sup> The Applicants contend that the savings resulting from each company's roaming traffic being brought onto the expanded Verizon Wireless network will be substantial.<sup>355</sup> Further, the Applicants state that Verizon Wireless will be able to save the costs currently incurred by both companies as a result of having to administer the companies' roaming agreements.<sup>356</sup> Finally, the Applicants state that as a result of the integration of the RCC and Verizon Wireless customer bases, the administrative costs associated with servicing customers will be reduced.<sup>357</sup> For example, the Applicants state that savings will result from the integration of RCC's third-party billing systems into Verizon Wireless's less costly in-house system.<sup>358</sup> Verizon Wireless expects to realize more than \$1 billion in synergies in reduced roaming and operations expenses.<sup>359</sup>

**e. Strengthen Competition**

108. The Applicants state that the proposed transaction "will create a stronger and more efficient wireless competitor with greater coverage in an industry where national coverage has proven to be paramount in attracting customers and driving competition."<sup>360</sup> They argue that competition will benefit all consumers in the relevant markets by encouraging better quality of service, more choice in services, applications, rate plans, and wireless devices, and lower prices.<sup>361</sup> Specifically, the Applicants assert that the benefits of competition will be especially profound in RCC service areas not currently served by Verizon Wireless, because a new national provider of wireless services would provide consumers in these areas with equipment and service choices, a variety of rate plans, data services, and content offerings.<sup>362</sup> The Applicants state that as a result of the proposed transaction, the number of

<sup>350</sup> Application, Public Interest Statement at 19.

<sup>351</sup> *Id.*

<sup>352</sup> *Id.* at 22.

<sup>353</sup> Verizon Wireless/RCC Opposition to Extension Motion at 4.

<sup>354</sup> *Id.*

<sup>355</sup> Application, Public Interest Statement at 22-23.

<sup>356</sup> *Id.* at 23.

<sup>357</sup> *Id.* at 24.

<sup>358</sup> *Id.*

<sup>359</sup> Transaction Press Release at 1.

<sup>360</sup> Application, Public Interest Statement at 24. *See also* Verizon Wireless/RCC Opposition at 5.

<sup>361</sup> Application, Public Interest Statement at 24-25.

<sup>362</sup> *Id.* at 25.

national wireless service providers will increase from zero to one in five markets, from one to two in eight markets, and from two to three in eight markets.<sup>363</sup>

### 3. Conclusion

109. While we find that this transaction is likely to result in transaction-specific public interest benefits, we are not able on the basis of this record, using the sliding-scale approach described above, to conclude that they are sufficiently large or imminent to outweigh the potential harms we have identified in certain individual markets. In those markets, therefore, remedies are necessary to ameliorate likely competitive harms.

## V. CONDITIONS/REMEDIES

110. Using the analytical standards outlined above, we find that the Applicants' proposed transaction would likely pose significant competitive harms in six local mobile telephony markets. We conclude that, in these markets, the potential harms would not be outweighed by the proposed transaction's alleged public interest benefits. Thus, if our analysis ended at this point, we would have to conclude that the Applicants have not demonstrated that the proposed transaction, on balance, would serve the public interest, convenience, and necessity.

111. In its review of proposed transactions, the Commission is empowered to impose conditions on the transfer of control of Commission licenses to mitigate the harms the transaction would likely create. Such conditions are tailored to address the specific harms anticipated based on economic analysis, examination of documents submitted in response to our inquiry, and public comment contained in the record of this proceeding. We conclude that the conditions set forth below alter the public interest balance of the proposed transaction by mitigating the potential public interest harms. Accordingly, with the conditions that we adopt in this Memorandum Opinion and Order and Declaratory Ruling, and assuming the Applicants' compliance with these conditions, we find that the Applicants have demonstrated that the proposed transfer of licenses would serve the public interest, convenience, and necessity.

112. We find that the operating unit divestitures described below resolve the transaction-specific harms raised by VDPS and the Joint Petitioners. As we discuss elsewhere, we decline to impose additional conditions proposed by VDPS and the Joint Petitioners because we find they are not designed to remedy transaction-specific harms.

### A. Operating Unit Divestitures

113. We found above that the proposed transaction would be likely to cause significant competitive harm in six geographic markets. Specifically, our analysis indicated that, in those markets, there would not be an adequate number of competing service providers remaining after the transaction with sufficient network and spectrum assets to deter anticompetitive behavior by the merged entity. To address these concerns, we will require the Applicants to divest all licenses, leases, and authorizations and related operational and network assets, which shall include certain employees, retail sites, subscribers,

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<sup>363</sup> *Id.* The Applicants believe that no national carriers are operational and marketing in CMA438, CMA439, CMA440, CMA489, and CMA608. The Applicants believe that only one national carrier is currently operating and marketing in CMA 429 (Sprint, through Nex-Tech), CMA434 (Sprint, through Nex-Tech), CMA637 (Sprint); CMA310 (T-Mobile), CMA384 (AT&T), CMA428 (Sprint, through Nex-Tech), CMA433 (Sprint, through Nex-Tech), and CMA464 (AT&T). The Applicants believe only two national carriers are operating and marketing in CMA 490 (T-Mobile & Sprint), CMA309 (AT&T & T-Mobile), CMA311 (AT&T & T-Mobile), CMA483 (AT&T & Sprint), CMA488 (T-Mobile & Sprint), CMA491 (T-Mobile & Sprint), CMA498 (T-Mobile & Sprint), and CMA709 (AT&T & Sprint). Application, Public Interest Statement at 25 n.43. *See also* Verizon Wireless/RCC Opposition at 6.

customers, all fixed assets, goodwill, and all spectrum associated therewith (together, the “Divestiture Assets”), of either Verizon Wireless or RCC, in certain markets. Thus, as in the *AT&T-Dobson Order* and the *Cingular-A&T Wireless Order*, we will here require the divestiture of all spectrum, including PCS and cellular spectrum, associated with the Verizon Wireless or RCC business unit being divested, and not just the business unit’s cellular spectrum.<sup>364</sup> Specifically, we condition this grant of authority to transfer control of licenses, authorizations, and spectrum manager leasing arrangements from RCC to Verizon Wireless on the divestiture of the Divestiture Assets in the following markets.

CMA	Name
CMA248	Burlington, Vermont
CMA560	New York 2 - Franklin
CMA679	Vermont 1 - Franklin
CMA680	Vermont 2 - Addison
CMA694	Washington 2 - Okanogan
CMA695	Washington 3 - Ferry

114. In its petition, VDPS argues that any divestiture requirements should include provisions to preserve the GSM network.<sup>365</sup> VDPS also requests that if divestiture is not required in all Vermont markets, Verizon Wireless should be required to maintain the GSM network at the current level of investment for at least six years in those markets where divestiture is not required.<sup>366</sup> Similarly, the Joint Petitioners argue that where Verizon Wireless would control the only GSM network, Verizon Wireless should be required to divest the GSM network, or must agree to maintain, upgrade, and expand the GSM service for as long as competitors and roamers could use it, or six years, whichever is longer.<sup>367</sup> The Applicants argue that forcing Verizon Wireless to maintain the same service as RCC currently offers would violate Commission policy and could work to the detriment of Verizon Wireless customers by preventing rates from decreasing over time.<sup>368</sup> As discussed above, it is the Commission’s long-standing policy not to dictate licensees’ technology choices.<sup>369</sup> Accordingly, we decline to require divestiture of cellular spectrum in other markets or to impose a condition that the buyer must retain GSM services. We do, however, specifically encourage Verizon Wireless to continue building out their operations in Vermont and to work with the newly created Vermont Telecommunications Authority in considering possible additional avenues for increasing wireless coverage to rural areas in Vermont.<sup>370</sup>

<sup>364</sup> See *AT&T-Dobson Order*, 22 FCC Rcd at 20366 ¶ 88; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21620 ¶ 254.

<sup>365</sup> VDPS Petition to Deny at 15.

<sup>366</sup> *Id.*.

<sup>367</sup> Joint Petitioners Petition to Deny at 9.

<sup>368</sup> Verizon Wireless/RCC Opposition at 21.

<sup>369</sup> See, e.g., *AT&T Dobson Order*, 22 FCC Rcd at 20336 ¶ 89; *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19523 n.26; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21608 ¶ 227; Spectrum Policy Task Force, ET Docket No. 02-135, *Report*, at 14 (rel. Nov. 2002).

<sup>370</sup> See Senator Sanders July 25, 2008 Letter.

## B. Operation of Divestitures

115. Disposal of the Divestiture Assets will be accomplished in the following way. A Management Trustee shall be appointed to serve as manager and operator of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, Verizon Wireless shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission's regulatory powers and process with respect to license transfers and assignments and the terms of the agreements contained in the DOJ Stipulation and DOJ Proposed Final Judgment.<sup>371</sup>

116. Verizon Wireless filed, on July 31 and August 1, 2008, applications to enter into short-term *de facto* transfer spectrum leasing and spectrum manager subleasing arrangements in order to transfer certain Divestiture Assets in CMA248, CMA560, CMA679, CMA680, CMA694, and CMA695 into the trust with the Management Trustee, and these applications include, as we require, a request to approve the identity of the Management Trustee and the terms of the trust agreement ("Management Trustee Agreement").<sup>372</sup> We require that all of the Divestiture Assets shall be transferred to the trust in accordance with the terms of this Order no later than upon consummation of this proposed transaction. The Management Trustee Agreement includes all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to run the businesses carried on in those CMAs and to permit expeditious divestiture.<sup>373</sup> The Management Trustee will serve at the cost and expense of the Applicants.<sup>374</sup>

117. From the date of release of this Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the DOJ Stipulation.<sup>375</sup> We also require that, to the extent the DOJ Stipulation or the Management Trustee Agreement requires the Applicants or the Management Trustee to provide DOJ with any reports, affidavits, notifications, or statements of compliance or requires that the Applicants seek any approvals from DOJ, the Applicants will also provide such reports, affidavits, notifications, and statements to, and seek such approvals from, the Commission.<sup>376</sup>

118. The Applicants will be allowed 120 days from the closing of their transaction or five days after notice of entry of the Final Judgment, whichever is later (the "Management Period"), to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative.<sup>377</sup> Upon

<sup>371</sup> DOJ Stipulation at 8-20; DOJ Proposed Final Judgment at 7-20.

<sup>372</sup> See *supra* ¶ 23 & notes 97, 98.

<sup>373</sup> The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in the DOJ Stipulation filed in the District Court for the District of Columbia on June 10, 2008, and in the Management Trustee Agreement. See *supra* ¶¶ 24-25. Except to the extent that any provisions herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

<sup>374</sup> DOJ Stipulation at 9; see also Management Trustee Agreement.

<sup>375</sup> DOJ Stipulation at 8-20.

<sup>376</sup> *Id.* at 11, 16-17; see also DOJ Proposed Final Judgment at 19; Management Trustee Agreement.

<sup>377</sup> DOJ Proposed Final Judgment at 7.

application by the Applicants to the Wireless Telecommunications Bureau (“Bureau”), the Bureau may grant one or more extensions of the Management Period, not to exceed 60 days in the aggregate, to allow the Applicants further time to dispose of the Divestiture Assets.<sup>378</sup>

119. Upon expiration of the Management Period, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a Divestiture Trustee, who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Bureau, for approval, both the name of the proposed Divestiture Trustee and a draft of the divestiture trust agreement<sup>379</sup> to be entered into with the Divestiture Trustee together with an appropriate application to effect such transfer no later than 30 days prior to the expiration of the Management Period.<sup>380</sup> The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

120. The Divestiture Trustee shall use its best efforts to sell the Divestiture Assets within six months of appointment, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments. The expeditious disposal of the Divestiture Assets during this period is of greater importance than the price that might otherwise be obtained for such assets. If a sale of any of the Divestiture Assets that consist of operating units and associated spectrum has not been effectuated within such period, the Divestiture Trustee shall file a report with the Bureau explaining the Divestiture Trustee’s efforts to sell the Divestiture Assets, the reasons why the Divestiture Assets have not been sold, and the Divestiture Trustee’s recommendations. The Commission will consider such report and will issue such further orders as it considers appropriate.

121. Subject to our regulatory powers and processes, to the extent that the Divestiture Assets are included within the DOJ Stipulation and the DOJ Proposed Final Judgment, we will allow the Applicants to proceed to divest such assets in accordance with the terms of the provisions of those documents. To the extent that this Order requires divestitures in any market that are more extensive than those required by DOJ, we require that the Applicants comply with this Order and completely dispose of the Divestiture Assets included in such markets.

122. To the extent that this Order, the Management Trust, or the Divestiture Trust conflicts with anything issued by DOJ, the Applicants, the Management Trustee, and the Divestiture Trustee must nonetheless comply with the terms of this Order.

## **VI. OTHER ISSUES**

### **A. Competitive Eligible Telecommunications Carrier Issues**

123. Joint Petitioners state that RCC is a Competitive Eligible Telecommunications Carrier (“CETC”) in most of its 15-state territory, and contend that RCC has received over \$150 million from the Universal Service Fund to build its GSM network.<sup>381</sup> The Joint Petitioners also claim that RCC offers a

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<sup>378</sup> If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be automatically extended and shall expire five days after the Commission’s action with respect to such Divestiture Assets.

<sup>379</sup> The Bureau will consult with the Office of General Counsel on matters relating to the identity of the proposed divestiture trustee and the terms of the divestiture trust.

<sup>380</sup> Except to the extent that any provisions herein conflict, the duties and responsibilities of the Divestiture Trustee are more fully set forth in the DOJ Proposed Final Judgment and we require that the Applicants and the Divestiture Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

<sup>381</sup> Joint Petitioners Petition to Deny at 5.

Universal Service rate plan to residents of Maine, Minnesota, and Mississippi.<sup>382</sup> In addition, Joint Petitioners state that RCC offers a \$35 per-month “Community Connections” rate plan in 14 out of 15 of its states.<sup>383</sup> Joint Petitioners note that a number of RCC’s existing GSM customers have filed informal comments with the Commission raising concerns about the continued provision of affordable, no-contract rate plans; local customer service; and GSM network maintenance and operation following consummation of the transaction.<sup>384</sup> Joint Petitioners request that, “absent full divestiture, VZW [Verizon Wireless] be required to maintain the GSM network for a period of six years” to enable “an orderly transition of all customers, including RCC’s CETC customer base.”<sup>385</sup> Joint Petitioners thus request that Verizon Wireless, or in case of divestiture of the GSM properties, its assignee or transferee, be required to continue to provide service as a CETC at the same rates and under the same terms and conditions as currently offered by RCC/Unicel, for at least six years or until such dates as the relevant state commission authorizes discontinuance, whichever is later.<sup>386</sup> Applicants argue that the proposed condition that Verizon Wireless be required to maintain RCC’s customer rate plans is unwarranted because this condition would not address any transaction-specific harms and would be contrary to Commission precedent of refraining from economic regulation in the wireless sector.<sup>387</sup>

124. Section 214(e)(2) of the Act provides state commissions with the primary responsibility for performing ETC designations.<sup>388</sup> The Commission previously has stated that it will act on a section 214(e)(6) ETC designation request from a carrier providing service on non-tribal lands “only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”<sup>389</sup>

125. In the majority of states at issue in the proposed transaction, the relevant state commissions asserted their jurisdiction over ETC designations, and the Commission acted on ETC designation requests in the remainder of states at issue. We find that the proposed transaction will not affect the ETC obligations of the companies at issue; the ETC obligations in effect prior to the proposed transaction will remain in effect upon consummation of the proposed transaction. Accordingly, we need not address herein Joint Petitioners’ request that Verizon Wireless, upon consummation of the proposed transaction, be required to continue to provide service as a CETC at the same rates and under the same terms and conditions as currently offered by RCC/Unicel. To the extent that after consummation of the proposed transaction Joint Petitioners observe any predicted or unpredicted public interest harms in a

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<sup>382</sup> *Id.* at 6.

<sup>383</sup> *Id.* at 5 n.8, 6.

<sup>384</sup> *Id.* at 6-7.

<sup>385</sup> *Id.* at 8.

<sup>386</sup> *Id.* at 9.

<sup>387</sup> Verizon Wireless/RCC Opposition at 21.

<sup>388</sup> 47 U.S.C. § 214(e)(2); *see also* Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12255 ¶ 93 (2000) (“*Twelfth Report and Order*”); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 20 FCC Rcd 6371 (2005).

<sup>389</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12255 ¶ 93; *see also* 47 U.S.C. § 214(e)(6) (setting forth requirements for Commission designation of ETCs where state commissions have refrained from asserting ETC designation jurisdiction).

given state for which RCC has obtained designation as an ETC, they may seek remedies from the relevant state commission or the Commission as appropriate.

### **B. Universal Service Fund Receipts**

126. The Federal-State Joint Board on Universal Service (“Joint Board”) and the Commission have each recognized and addressed the need to control the explosive growth in high-cost universal service support disbursements to competitive ETCs.<sup>390</sup> As recommended by the Joint Board, the Commission recently adopted an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive.<sup>391</sup> Specifically, as of August 1, 2008, total annual competitive ETC support for each state will be capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008 on an annualized basis.<sup>392</sup> The Commission also adopted two limited exceptions from the specific application of the interim cap.<sup>393</sup> First, a competitive ETC will not be subject to the interim cap to the extent it files cost data demonstrating that its costs meet the support threshold in the same manner as the incumbent local exchange carrier.<sup>394</sup> Second, the Commission adopted a limited exception to competitive ETCs serving tribal lands or Alaska Native regions.<sup>395</sup> The interim cap will remain in place only until the Commission adopts comprehensive high-cost universal service reform.<sup>396</sup> Therefore, Verizon Wireless and RCC are subject to the interim cap on competitive ETC high-cost support as set forth in the *USF Interim Cap Order*.

### **C. Maintenance of Analog Service**

127. Joint Petitioners argue that discontinuance of RCC’s analog service will disproportionately impact wireless customers in rural and remote areas who may only be able to receive analog signals.<sup>397</sup> Accordingly, Joint Petitioners request that Verizon Wireless be required to maintain analog service in RCC’s service territories either for 24 months following the availability of ubiquitous digital coverage or until Verizon Wireless completes the transition of RCC’s legacy customers from GSM to CDMA, whichever is later.<sup>398</sup> The Applicants respond that maintenance of analog service within RCC’s markets is irrelevant to the underlying transaction.<sup>399</sup> The Applicants contend that the Joint Petitioners’ request amounts to an untimely petition for reconsideration of the Commission’s 2002

<sup>390</sup> See Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Recommended Decision*, 22 FCC Rcd 8998, 8998 ¶ 1 (Fed.-State Jt. Bd. 2007) (“*Recommended Decision*”); see also *ALLTEL-Atlantis Order*, 22 FCC Rcd at 19520 ¶ 8.

<sup>391</sup> High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, *Order*, 23 FCC Rcd 8834 (2008) (“*USF Interim Cap Order*”).

<sup>392</sup> *Id.* A summary was published in the Federal Register on July 2, 2008, establishing an effective date of August 1, 2008. See 73 Fed. Reg. 37882 (July 2, 2008).

<sup>393</sup> *USF Interim Cap Order*, 23 FCC Rcd at 8834 ¶ 1.

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

<sup>396</sup> *Id.* The Commission is required by statute to act within one year after receiving a recommendation from the Joint Board. 47 U.S.C. § 254(a)(2).

<sup>397</sup> See Joint Petitioners Petition to Deny at 8; see also Vermont PIRG Extension Motion at 2.

<sup>398</sup> Joint Petitioners Petition to Deny at 9.

<sup>399</sup> Verizon Wireless/RCC Opposition at 25. Verizon Wireless stated its intent to retire its analog cellular service on February 18, 2008. See Application, Public Interest Statement at 2 n.4, 13 n.31, 15. See *supra* note 11.

Biennial Review Order in which it adopted a five-year sunset period for the analog service requirement.<sup>400</sup> Moreover, the Applicants state that the Commission recently rejected a request to extend the analog sunset requirement past the February 18, 2008 sunset date.<sup>401</sup>

128. We reject Joint Petitioners' request that we mandate Verizon Wireless to offer analog service in RCC's service territories as a condition of consent to the proposed transaction. We concur with the Applicants that imposing such a requirement is in no way related to the transaction pending before us.<sup>402</sup> Rather, under the Commission's rules and policies, Verizon Wireless and RCC both were entitled to discontinue providing analog service to the public as of February 18, 2008.<sup>403</sup> We have taken steps "to ensure the continuity of wireless coverage to affected consumers following sunset of the analog service requirement and to ensure that interested parties are fully informed of [the February 2008] sunset."<sup>404</sup> In 2007, we rejected efforts to extend the analog service sunset date on the basis that such an extension would not serve the public interest.<sup>405</sup> Joint Petitioners have presented us with no evidence that would warrant us revisiting this conclusion in the context of this transaction.

#### **D. Handset Transition Issues**

129. Senator Sanders expresses concern that Verizon Wireless would offer only free basic handsets to all Unice! customers, and that customers with more advanced phones operating on GSM will have to pay significant costs to get a comparable phone that works on the CDMA network.<sup>406</sup> Accordingly, Senator Sanders advocates that any approval of the proposed transaction be conditioned on the free exchange of RCC customers' phones for equivalent Verizon Wireless handsets.<sup>407</sup> The Joint Petitioners suggest that, consistent with the principles of platform openness, legacy RCC subscribers should not be required to exchange their GSM handsets for CDMA handsets, but rather should be allowed to use whichever network and technology platform they prefer for as long as both GSM and CDMA networks remain in operation.<sup>408</sup>

130. The Applicants state, in response to these concerns, that the condition is not necessary and that Verizon Wireless will provide a free comparable handset or a discounted higher-end CDMA handset to RCC customers.<sup>409</sup> The Applicants also argue that the proposal conflicts with Commission precedent, which rejects this type of broad platform openness.<sup>410</sup> This commitment on the part of Verizon Wireless should address the concerns regarding the exchange of handsets by existing RCC customers. In addition, consistent with our decision to decline to condition our approval of the transaction on a

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<sup>400</sup> Verizon Wireless/RCC Opposition at 25.

<sup>401</sup> *Id.* (citing Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, *Memorandum Opinion and Order*, 22 FCC Rcd 11243 (2007)).

<sup>402</sup> *See* Verizon Wireless/RCC Opposition at 25.

<sup>403</sup> *See* 47 C.F.R. 22.901(b).

<sup>404</sup> Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters, RM No. 11355, *Memorandum Opinion and Order*, 22 FCC Rcd 11243, 11244 (2007).

<sup>405</sup> *See id.* at 11247.

<sup>406</sup> Senator Sanders Oct. 29, 2007 Letter at 2.

<sup>407</sup> *Id.* at 3; Senator Sanders November 20, 2007 Letter at 1.

<sup>408</sup> Joint Petitioners Petition to Deny at 9.

<sup>409</sup> Application, Public Interest Statement at 23-24; Verizon Wireless/RCC Opposition at 17, 23.

<sup>410</sup> Verizon Wireless/RCC Opposition at 23-24.

requirement to maintain RCC's GSM network for a specified period of time in certain markets,<sup>411</sup> we also decline to condition our approval on dictating the nature and terms of the services to be offered by Verizon Wireless.

**E. GSM-to-CDMA Conversion Issues**

131. In their Reply, the Joint Petitioners urge the Commission to require Verizon Wireless to provide greater detail regarding its plans for converting RCC customers from service on the existing GSM facilities to Verizon Wireless CDMA service offerings.<sup>412</sup> Joint Petitioners in particular request that Verizon Wireless provide detailed information about the GSM-to-CDMA conversion the company is undertaking in the Charleston and Huntington, West Virginia markets following Verizon Wireless's acquisition of West Virginia Wireless.<sup>413</sup> The Joint Petitioners also pose a number of specific questions regarding Verizon Wireless's customer transition plans.<sup>414</sup>

132. Verizon Wireless has described a number of steps that it is taking to facilitate the transition of former RCC GSM customers to Verizon Wireless's CDMA services.<sup>415</sup> We recognize that Verizon Wireless, in light of its many acquisitions, has had significant experience in transitioning customers from one system on another, some involving the replacement of one technology with another.<sup>416</sup> We believe that Verizon Wireless has provided sufficient discussion of its plans consistent with the transition information we seek when considering proposed transactions. Moreover, the Commission will monitor for any problems that may arise regarding customer transition issues subsequent to the transfer of RCC's systems to Verizon Wireless, and will take any steps necessary to address actions that are contrary to the public interest under the Communications Act.

**F. Petition for Reconsideration of the Bureau's Order Extending the Pleading Cycle**

133. As discussed above, the Applicants filed a petition for reconsideration of the Bureau's order granting Vermont PIRG's request for an extension of time to file petitions to deny.<sup>417</sup> The Applicants assert that the length of the extension of time is unprecedented and unsupported by facts.<sup>418</sup> The Applicants report that they have been in confidential negotiations with several companies since mid-September to divest all of RCC's overlapping cellular operations in Vermont and made a commitment of such a divestiture to DOJ on October 30, 2007 rendering Vermont PIRG's opposition moot.<sup>419</sup> The Applicants further argue that a failure to set aside the extension would postpone the Commission's review of the transaction and thereby delay the many public benefits resulting from the transaction, including deployment of new wireless broadband service to RCC's customers.<sup>420</sup>

134. In its Opposition, Vermont PIRG argues that its request was broader than competitive concerns in Vermont, and therefore the Applicants' commitment to DOJ does not change its underlying

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<sup>411</sup> See *supra* ¶ 88.

<sup>412</sup> Joint Petitioners Reply at 4-5.

<sup>413</sup> *Id.* at 4.

<sup>414</sup> *Id.* at 4-5.

<sup>415</sup> Verizon Wireless/RCC Opposition at 17-18.

<sup>416</sup> See *id.* at 17.

<sup>417</sup> See Verizon Wireless/RCC Petition for Reconsideration.

<sup>418</sup> *Id.* at 1-2. See also Verizon/RCC Opposition at 2-4.

<sup>419</sup> Verizon Wireless/RCC Petition for Reconsideration at 2.

<sup>420</sup> *Id.* at 2-3. See also Verizon/RCC Opposition at 2-4.

argument.<sup>421</sup> Vermont PIRG asserts that its request was based upon the impact that the transaction would have both on Vermont's RCC subscribers and also on GSM subscribers visiting from other states.<sup>422</sup> In particular, Vermont PIRG argues that RCC subscribers would not only lose access to analog (and possibly TDMA) services as early as February 18, 2008, but would also lose access to a GSM network once Verizon Wireless completes its overlay of CDMA technology in current GSM service areas.<sup>423</sup> Vermont PIRG further argues that the 90-day extension is justified under Commission policy for a transaction requiring closer scrutiny.<sup>424</sup> As justification for this closer scrutiny by the Commission, Vermont PIRG asserts that, if the transaction is approved, the number of competitors will likely be reduced from four to three in some markets and three to two in others.<sup>425</sup> Vermont PIRG also notes that similar major transactions have taken the Commission more than 180 days to review.<sup>426</sup> In addition, Senator Sanders opposed the required reconsideration on the basis that the scope of the Applicants' commitment to divest certain GSM assets was unclear and would not, in any event, address all of the concerns previously raised by the Senator.<sup>427</sup>

135. VDPS also filed comments in response to the Verizon/RCC Petition for Reconsideration, arguing the importance of competitive pricing and service throughout Vermont in general and for the maintenance of a GSM network in Bennington, Windham, and southern Windsor counties in particular.<sup>428</sup> VDPS requests that, in the event the Applicants and the Commission do not agree that all portions of RCC's Vermont operations should be divested, the Commission should require that Verizon Wireless maintain the GSM network in such markets for a period of six years.<sup>429</sup>

136. In response, the Applicants argue that there is no basis for granting an extension of time.<sup>430</sup> They reiterate that the Applicants have committed to DOJ to divest overlapping RCC cellular operations in Vermont.<sup>431</sup> They also argue that the filings by both Vermont PIRG and Senator Bernard Sanders undercut their argument that additional time is required to review and analyze the Applications, as both documents provided ample substantive comments on the transaction.<sup>432</sup> Further, the Applicants state in an *ex parte* notification that the extension of time was no longer necessary since they had already reached an agreement to sell to AT&T RCC's overlapping cellular assets in Vermont.<sup>433</sup> Specifically, Verizon Wireless asserts that it has agreed to divest RCC's Vermont operations to AT&T so that AT&T

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<sup>421</sup> See Vermont PIRG Reconsideration Opposition at 2-4.

<sup>422</sup> *Id.* at 2.

<sup>423</sup> *Id.*

<sup>424</sup> *Id.* at 5-6.

<sup>425</sup> *Id.* at 5-6. See also VDPS Petition to Deny at 10.

<sup>426</sup> Vermont PIRG cites to the merger of Verizon and MCI (199 days), Cingular and AT&T Wireless (208 days); VoiceStream, Powertel and Deutsche Telekom (196 days), AT&T and BellSouth (253 days), and Verizon and FairPoint (257 days and counting). Vermont PIRG Reconsideration Opposition at 6.

<sup>427</sup> Senator Sanders Nov. 20, 2007 Letter at 1.

<sup>428</sup> See VDPS Reconsideration Comments at 3-4.

<sup>429</sup> *Id.* at 4.

<sup>430</sup> See Verizon Wireless/RCC Reconsideration Reply at 1.

<sup>431</sup> *Id.* at 2.

<sup>432</sup> *Id.* at 3-4.

<sup>433</sup> See Verizon Wireless Dec. 5, 2007 *Ex Parte* Filing at 1.

can provide GSM service to both former RCC customers and to other GSM users.<sup>434</sup> Verizon Wireless also states that it has agreed to maintain RCC's GSM network in southern Vermont until a GSM carrier is able to offer service in that portion of the state.<sup>435</sup> These arrangements would, according to Verizon Wireless, ease concerns about competition and GSM network access.<sup>436</sup> Therefore, Verizon Wireless argues that the 90-day extension should be rescinded and the original pleading cycle reinstated, or in the alternative an extension of the pleading cycle should be limited to 30 days.<sup>437</sup>

137. On December 12, 2007, Vermont PIRG filed an opposition to the Applicants' *ex parte* notification, stating that the Applicants have failed to show that the sale of RCC's overlapping cellular assets will address the issues raised by Vermont PIRG and others.<sup>438</sup> Vermont PIRG raises additional practical concerns regarding the Verizon-AT&T agreement, including whether AT&T will offer free replacement handsets to Unisel (RCC) customers or whether AT&T will offer the iPhone to Vermont subscribers (which would require an upgrade to the GSM network).<sup>439</sup> Vermont PIRG further argues that there is no evidence that an extended comment period would adversely affect the parties' timetable for closing, as the proposal for exchange between Verizon Wireless and AT&T has not yet been submitted to the Commission for review and public comment.<sup>440</sup>

138. *Discussion.* Since the pleading cycle has already lapsed with the submission of petitions to deny on February 11, 2008, oppositions on February 21, 2008, and replies on February 28, 2008, the issue is now moot and we take no further action on the Verizon Wireless/RCC Petition for Reconsideration.<sup>441</sup>

## VII. FOREIGN OWNERSHIP

139. Verizon Wireless requests that we extend its current section 310(b)(4) foreign ownership ruling to encompass the RCC Subsidiaries and their common carrier wireless licenses and spectrum leases that will be transferred to Verizon Wireless as a result of the proposed transaction.<sup>442</sup> We find, subject to certain conditions, that the public interest would be served by extending to the RCC Subsidiaries and to their wireless licenses and spectrum leases the foreign ownership ruling that the Commission issued to Verizon Wireless in the *Vodafone-Bell Atlantic Order*.<sup>443</sup> We are satisfied, based on the record

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<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.* at 2.

<sup>437</sup> For a 30-day extension of the pleading cycle, petitions to deny would be due December 13, 2007, oppositions would be due December 24, 2007, and replies would be due December 31, 2007. *Id.* at 1, 3.

<sup>438</sup> See Vermont PIRG Dec. 12, 2007 *Ex Parte* Filing at 1.

<sup>439</sup> *Id.* (referencing Bruce Edwards, *AT&T to acquire much of Unisel's service in Vt.*, RUTLAND HERALD (Dec. 5, 2007) (attached to Vermont PIRG Dec. 12, 2007 *Ex Parte* Filing).

<sup>440</sup> Vermont PIRG Dec. 12, 2007 *Ex Parte* Filing at 1.

<sup>441</sup> Comment Extension Order, 22 FCC Rcd at 19801 ¶¶ 6, 7.

<sup>442</sup> 47 U.S.C. § 310(b)(4). Verizon Wireless filed two identical requests for declaratory ruling to cover RCC's wholly-owned subsidiaries, RCC Atlantic Licenses, LLC, RCC Minnesota, Inc. and TLA Spectrum, LLC (ISP-PDR-20070928-00011), and Wireless Alliance, LLC, of which RCC owns a 70% controlling interest (ISP-PDR-20070928-00012).

<sup>443</sup> Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation for Consent to Transfer of Control or Assignment of Licenses and Authorizations, *Memorandum Opinion and Order*, 15 FCC Rcd 16507, 16514 ¶ 19 (WTB/IB 2000) ("*Vodafone-Bell Atlantic Order*").

information submitted by Verizon Wireless, that its current foreign ownership complies with the ruling and that the proposed transactions raise no new foreign ownership issues.

140. We review the post-transaction foreign ownership of the RCC Subsidiaries under sections 310(b)(4) and 310(d) of the Act and Commission rules and policies established in the *Foreign Participation Order*.<sup>444</sup> As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed transfer of control.<sup>445</sup> Relying on Commission precedent, we find that the proposed transfers do not raise any issues under section 310(a) or 310(b)(1)-(b)(3) of the Communications Act.<sup>446</sup> Our analysis focuses on issues raised under section 310(b)(4) of the Act. Based on the record before us, we conclude for the reasons stated below that it would not serve the public interest to deny consent to the proposed transactions because of the foreign equity and voting interests that will be held indirectly in the RCC Subsidiaries as a result of their indirect foreign ownership by and through Vodafone and Verizon.

141. Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and governments in U.S.-organized entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.<sup>447</sup> The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.<sup>448</sup>

<sup>444</sup> See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), *Order on Reconsideration*, 15 FCC Rcd 18158 (2000).

<sup>445</sup> The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d) of the Communications Act. *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. See also *infra* Section VIII (National Security, Law Enforcement, Foreign Policy, and Trade Concerns).

<sup>446</sup> Section 310(a) of the Communications Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative will hold any of the radio licenses. Section 310(b)(1)-(2) of the Communications Act prohibits common carrier, broadcast, and aeronautical fixed or aeronautical en route radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation will hold any of the common carrier licenses in this case. Accordingly, we find that the proposed transactions are not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Communications Act. See *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9804-9809 ¶¶ 38-48. Additionally, because the foreign investment in the RCC Subsidiaries will be held through a controlling U.S. parent company, RCC, the proposed transactions do not trigger section 310(b)(3) of the Communications Act, which places a 20% limit on alien, foreign corporate, or foreign government ownership of entities that themselves hold common carrier, broadcast, and aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, *Declaratory Ruling*, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner I*"), recon. in part, 1 FCC Rcd 12 (1986).

<sup>447</sup> 47 U.S.C. § 310(b)(4). The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *BBC License Subsidiary L.P.*, *Memorandum Opinion and Order*, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) ("*BBC License Subsidiary*"). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *Id.* at 10972 ¶ 20, 10973-74 ¶¶ 22-25.

<sup>448</sup> See *id.* at 10973-74 ¶ 25.

Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the “public interest will be served by the refusal or revocation of such license.”<sup>449</sup>

142. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (“WTO”) Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.<sup>450</sup> Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.<sup>451</sup>

143. Because the Commission has previously issued a foreign ownership ruling to Verizon Wireless, we consider in this proceeding whether Verizon Wireless remains in compliance with its ruling and, if so, whether it is appropriate to extend Verizon Wireless’s current ruling to encompass the RCC Subsidiaries and their common carrier wireless licenses and spectrum leases that will be transferred to Verizon Wireless. We examine these issues below.

#### A. Review of Foreign Ownership Issues

144. After consummation of the proposed transactions, RCC will be a wholly-owned indirect subsidiary of Verizon Wireless.<sup>452</sup> RCC will continue to wholly own RCC Atlantic, RCC Minnesota, and TLA Spectrum, and to hold a controlling 70 percent ownership interest in Wireless Alliance.<sup>453</sup> The other 30 percent of Wireless Alliance is owned by T-Mobile USA, Inc. and is unaffected and unchanged by the transactions.<sup>454</sup>

145. Verizon Wireless is a general partnership of which 55 percent is indirectly owned by Verizon and the remaining 45 percent is indirectly owned by Vodafone.<sup>455</sup> Verizon and Vodafone hold their partnership interests in Verizon Wireless through numerous intermediate subsidiaries organized under the laws of Luxembourg, the Netherlands, and the United Kingdom, all of which are WTO Member countries, and the United States.<sup>456</sup> Verizon is a widely held, publicly traded company organized in the

<sup>449</sup> 47 U.S.C. § 310(b)(4).

<sup>450</sup> *Foreign Participation Order*, 12 FCC Rcd at 23896 ¶ 9, 23913 ¶ 50, 23940 ¶¶ 111-112. In evaluating an applicant’s request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors. *See Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

<sup>451</sup> *Foreign Participation Order*, 12 FCC Rcd at 23913 ¶ 50, 23940 ¶¶ 111-112. The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25 percent of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.*, 12 FCC Rcd at 23946 ¶ 131.

<sup>452</sup> *See supra* ¶ 9.

<sup>453</sup> *Id.*

<sup>454</sup> *See* Petitions for Declaratory Ruling, File Nos. ISP-PDR-20070928-00011 and ISP-PDR-20070928-00012, at 5.

<sup>455</sup> *See supra* ¶ 5.

<sup>456</sup> *See generally* Cellco Form 602.

United States.<sup>457</sup> Vodafone is a widely held, publicly traded company organized in the United Kingdom.<sup>458</sup>

146. In the *Vodafone-Bell Atlantic Order* issued in 2000, the Commission authorized Verizon Wireless “to be indirectly owned by Vodafone in an amount up to 65.1 percent.”<sup>459</sup> The Commission stated that Verizon Wireless “would need additional Commission authority under section 310(b)(4) before Vodafone could increase its investment above authorized levels”<sup>460</sup> and that “[a]dditional authority also would be required before any other foreign entity or entities acquire, in the aggregate, a greater-than-25 percent indirect interest” in Verizon Wireless.<sup>461</sup> For purposes of calculating the additional, aggregate 25 percent amount, Verizon Wireless is required to include foreign ownership of Verizon and foreign ownership of Vodafone, other than ownership of Vodafone from the United States and the United Kingdom.<sup>462</sup>

147. We find it reasonable to conclude on this record that current foreign ownership of Verizon Wireless remains in compliance with the foreign ownership ruling issued in the *Vodafone-Bell Atlantic Order*. On behalf of Vodafone, UBS AG obtained information regarding the beneficial owners of Vodafone shares using information obtained from Vodafone’s Registrars and inquiries made pursuant to section 793 of the U.K. Companies Act 2006.<sup>463</sup> Through this process, Vodafone identified the beneficial owners of 96.68 percent of Vodafone’s shares.<sup>464</sup> Vodafone determined each beneficial owner’s citizenship to be the country identified in the owner’s address of record.<sup>465</sup> On the basis of the information gathered and applying this methodology, Vodafone determined that, as of February 29, 2008, approximately 54.21 percent of its shares were beneficially owned by U.K. citizens and 31.24 percent by U.S. citizens. Collectively, these numbers indicate that approximately 14.55 percent of Vodafone’s

<sup>457</sup> See *supra* ¶ 6.

<sup>458</sup> See *supra* ¶ 7. See also Letter from Nancy J. Victory, Counsel for Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Apr. 8, 2008), at 2-3 (“Verizon Wireless April 8, 2008 Letter”).

<sup>459</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19. The Commission has extended this ruling to cover the AWS services, see International Authorizations Granted, File No. ISP-PDR-20060619-00015, *Public Notice*, 21 FCC Rcd 13575 (IB 2006), and permitted Verizon Wireless to acquire ownership interests in other common carriers, see, e.g., Applications of Northcoast Communications, LLC and Celco Partnership d/b/a Verizon Wireless, *Memorandum Opinion and Order*, 18 FCC Rcd 6490, 6492 ¶ 6 & n.15 (CWD 2003); Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Celco Partnership d/b/a Verizon Wireless, *Public Notice*, 16 FCC Rcd 7155 (WTB/IB 2001).

<sup>460</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19.

<sup>461</sup> *Id.*

<sup>462</sup> See *id.* at 16514 ¶ 19 n.34.

<sup>463</sup> UBS AG is an investment banking and securities firm. See Verizon Wireless April 8, 2008 Letter at 2. Verizon Wireless states that the U.K. Companies Act 2006 (available at <http://www.opsi.gov.uk>) gives public companies the right (not an obligation) to investigate who has interests in their shares. *Id.* at 2 n.4. Under separate regulations, an investor who acquires voting rights for 3% or more of a U.K. public company’s shares must disclose that fact to the company, which itself then must notify such interests to the stock market via a regulatory news announcement. *Id.*

<sup>464</sup> Vodafone had 53,125,879,401 shares issued and outstanding as of February 29, 2008. See *id.* at 2.

<sup>465</sup> Vodafone determined the citizenship of the holders of unidentified shares by pro-rating the number of unidentified shares based upon the citizenship allocation of the identified shares. See *id.* at 3 n.6.

shares are beneficially owned by citizens of neither the United Kingdom nor the United States.<sup>466</sup> According to Verizon Wireless, the information Vodafone obtained indicates that this 14.55 percent of the company's shares is overwhelmingly held in WTO Member countries.<sup>467</sup>

148. Verizon also determined the citizenship of its shareholders to be the country identified in each beneficial owner's address of record.<sup>468</sup> With respect to Verizon shares held through brokerage accounts (*i.e.*, in "street name"), Verizon obtained from Broadridge Financial Solutions, Inc. (Broadridge) aggregate information regarding the beneficial owner's address of record.<sup>469</sup> This information indicates that, as of March 3, 2008, 90.26 percent of Verizon's shares held in street name were beneficially owned by U.S. citizens and 9.74 percent by non-U.S. citizens.<sup>470</sup> Address of record information for Verizon's registered shareholders indicates that, as of that date, 99.58 percent of these shares were beneficially owned by U.S. citizens and 0.42 percent by non-U.S. citizens.<sup>471</sup> Collectively, for all Verizon shares, these numbers indicate that approximately 8.65 percent of Verizon's shares are beneficially owned by non-U.S. citizens.<sup>472</sup>

149. We find that the information Verizon Wireless has relied on to demonstrate compliance with its foreign ownership ruling – the address of record of the beneficial owners of shares of Vodafone and Verizon – is reasonable in the special circumstances of the companies concerned, given that both Vodafone and Verizon are widely held, publicly traded companies with a very large number of issued and outstanding shares. Thus, we believe it would be difficult and costly, even using a survey methodology, for Vodafone and Verizon to determine the citizenship or principal place of business of their beneficial

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<sup>466</sup> According to Verizon Wireless, this information is consistent with the geographic distribution of shares reported in Vodafone's 2007 annual report filed with the U.S. Securities and Exchange Commission. *See id.* at 3 n.7. That report indicated that, as of March 2007, approximately 56.02% of Vodafone's shares were held in the United Kingdom, 30.60% in North America, 12.38% in Europe (excluding the United Kingdom), and 1% in the rest of the world. *Id.* (citing Vodafone Group Public Limited Company, SEC Form 20-5, Annual Report for the Fiscal Year ended Mar. 31, 2007, at 152 (under Geographical analysis of shareholders section heading)). These figures are also substantially similar to the geographic distribution information in Vodafone's 2008 annual report (available at <http://www.vodafone.com>) and in the Vodafone-Bell Atlantic proceeding. *See id.* ¶ 19 n.34 (stating that approximately 47.43% of Vodafone's shares are held by U.K. citizens, 36.05% by citizens of North America, 7.8% by citizens of Europe, and the remainder by citizens from around the world).

<sup>467</sup> Verizon Wireless states that less 0.02% of Vodafone's shares have beneficial owners with addresses of record in non-WTO Member countries. *See* Verizon Wireless April 8, 2008 Letter at 3.

<sup>468</sup> As of March 3, 2008, Verizon had 2,850,629,251 shares issued and outstanding, of which 2,518,086,492 shares were held through brokerage accounts (*i.e.*, in "street name"), and the remaining 332,542,759 shares were held by registered shareholders. *See id.* at 3-4.

<sup>469</sup> Broadridge specializes in securities processing, clearing and outsourcing, and in investor communications. *See id.* at 4. Verizon Wireless explains that, in the ordinary course, Broadridge collects and maintains address of record information for the purpose of sending proxies and other correspondence to beneficial owners of Verizon shares who hold their shares in street name or through a nominee. *Id.* at 4. To the extent that Verizon shares are held by a nominee, Broadridge obtains the beneficial owner information from the nominee. *Id.* at 4 n.10.

<sup>470</sup> Of the 2,518,086,492 Verizon shares held in street name, 2,272,860,045 were held by U.S. citizens and 245,226,447 were held by non-U.S. citizens. *See id.* at 4.

<sup>471</sup> Of the 332,542,759 Verizon shares held by registered shareholders, 331,139,104 were held by U.S. citizens and 1,403,655 were held by non-U.S. citizens. *See id.* at 4.

<sup>472</sup> Verizon Wireless has not determined whether a portion of these foreign shareholdings are from non-WTO Member countries. *See id.* at 4. The information it has provided indicates nonetheless that non-U.S. ownership of Verizon (8.65%) together with non-U.S., non-U.K. ownership of Vodafone (14.55%) is below the 25% aggregate allowance specified in the Verizon Wireless ruling for such ownership. *See supra* ¶ 146.

owners, other than using the beneficial owner's address of record. It would be equally if not more difficult to also trace the direct or indirect foreign ownership of the beneficial owners themselves given the widely-held nature of Verizon and Vodafone shares. Moreover, the proposed transaction involves only the transfer of common carrier wireless licensees to Verizon Wireless.<sup>473</sup> We find that, in these circumstances, any benefit to our policies from requiring Vodafone and Verizon to make further inquiries of their shareholders is outweighed by the burden this would impose on investors in the public markets and the possible financial impact such inquiries may have in the trading of Vodafone's and Verizon's shares.

150. For these reasons, we find that Verizon Wireless is entitled to a rebuttable presumption that, following consummation of the proposed transaction, the indirect foreign ownership in the RCC Subsidiaries would not pose a risk to competition in the U.S. market. We find no evidence in the record that rebuts this presumption and, as we explain above, we find no basis to conclude that the proposed transaction is likely to harm competition.<sup>474</sup> The Executive Branch has reviewed the transaction and advised that it has no objection to grant of the transfer applications provided the Commission conditions consent to the RCC applications on Verizon Wireless's compliance with the commitments set forth in its March 27, 2008 Letter to the Department of Homeland Security.<sup>475</sup> We therefore find it is in the public interest to extend Verizon Wireless's section 310(b)(4) foreign ownership ruling to cover the RCC Subsidiaries.

#### **B. Declaratory Ruling**

151. Accordingly, this declaratory ruling permits Verizon Wireless to acquire up to and including 100 percent of the equity and voting interests in the RCC Subsidiaries – RCC Atlantic, RCC Minnesota, TLA Spectrum, and Wireless Alliance – subject to the terms and conditions of the ruling issued in the *Vodafone-Bell Atlantic Order*.<sup>476</sup> We emphasize that, as Commission licensees, RCC Atlantic, RCC Minnesota, TLA Spectrum, and Wireless Alliance have an affirmative duty to monitor their foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.<sup>477</sup>

### **VIII. NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY, AND TRADE CONCERNS**

152. When analyzing a transfer of control or assignment application in which foreign ownership is involved, we also consider any national security, law enforcement, foreign policy, or trade

<sup>473</sup> Thus, this case does not present the issue of whether the Commission should exercise its discretion to permit indirect foreign ownership of a broadcast licensee pursuant to section 310(b)(4) of the Communications Act.

<sup>474</sup> See discussion *supra* ¶ 147. See also *Foreign Participation Order*, 12 FCC Rcd at 23905-09 ¶¶ 33-41.

<sup>475</sup> See *infra* Section VIII.

<sup>476</sup> *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16514 ¶ 19. See also *supra* ¶ 146. The instant ruling permits Verizon Wireless to acquire the remaining 30% of Wireless Alliance that is currently owned by T-Mobile USA, Inc., or any portion thereof, without seeking our prior approval under section 310(b)(4).

<sup>477</sup> Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P. Petition for Expedited Action for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as Amended, *Order and Declaratory Ruling*, 23 FCC Rcd 4436, 4443 ¶ 16 (2008); Verizon Communications, Inc., Transferor and América Móvil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), WT Docket No. 06-113, *Memorandum Opinion and Order and Declaratory Ruling*, 22 FCC Rcd 6195, 6225 ¶ 68 (2007).

policy concerns raised by the Executive Branch.<sup>478</sup> As previously noted, on November 9, 2007, DHS, with the concurrence of DOJ and the FBI, requested that the Commission defer action on the RCC applications to allow them an opportunity to complete their review for any national security, law enforcement, and public safety issues.<sup>479</sup> On April 2, 2008, DHS and DOJ filed a Petition to Adopt Conditions to Authorizations and Licenses (“DHS Petition”).<sup>480</sup> The DHS Petition states that DHS has no objection to grant of the RCC applications provided the Commission conditions grant on compliance by Verizon Wireless with the terms of the March 27, 2008 Letter addressed to DHS and executed by Verizon Wireless and its parent corporations, Verizon and Vodafone.<sup>481</sup> In the March 27, 2008 Letter, which is attached to the DHS Petition, the parties agree to confer on DHS the same rights and benefits accorded to DOJ, the Department of Defense (“DOD”), and the FBI in the December 14, 1999 Agreement between Verizon Wireless and its parent corporations on the one hand, and DOJ, DOD, and the FBI on the other.<sup>482</sup>

153. The DHS Petition states that DHS has taken the position that its ability to satisfy its obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers.<sup>483</sup> DHS states that the commitments set forth in the March 27, 2008 Letter will help ensure that DHS and other entities with responsibility for enforcing the law, protecting the national security and preserving the public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities. Accordingly, DHS, with the concurrence of DOJ and the FBI, withdrew its request that we defer action in this proceeding, and it asks the Commission to condition grant of the RCC applications on Verizon Wireless’s compliance with the terms of the March 27, 2008 Letter.

154. In assessing the public interest, we take into the account the record and accord deference to Executive Branch expertise on national security and law enforcement issues.<sup>484</sup> As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the

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<sup>478</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23918 ¶ 59, 23919-21 ¶¶ 61-66; Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24094, 24170 ¶ 178 (1997).

<sup>479</sup> Letter from Gregory Pinto, Director, Regulatory Policy, United States Department of Homeland Security, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Nov. 9, 2007).

<sup>480</sup> Petition to Adopt Conditions to Authorizations and Licenses (Apr. 2, 2008) (“DHS Petition”). The DHS Petition is publicly available on the FCC web site by searching the record for this proceeding, WT Docket 07-208, through the Electronic Comment Filing System (ECFS). We also include the DHS Petition as Appendix C to this Memorandum Opinion and Order and Declaratory Ruling.

<sup>481</sup> See DHS Petition at 2 (referencing and attaching Letter from Steven E. Zipperstein, for Cellco Partnership d/b/a Verizon Wireless, Marianne Drost, for Verizon Communications Inc. and Stephen Scott, for Vodafone Group Plc, to Stewart Baker, Assistant Secretary of Policy, Department of Homeland Security (dated Mar. 27, 2008)).

<sup>482</sup> See DHS Petition at 2. The December 14, 1999 Agreement is appended to the *Vodafone-Bell Atlantic Order*, in which the Commission conditioned its consent to the transfer of control or assignment of licenses to Verizon Wireless on its compliance with the December 14, 1999 Agreement. See *Vodafone-Bell Atlantic Order*, 15 FCC Rcd at 16520-21 ¶¶ 34-37, 16521-22 ¶ 41 & Appendix A.

<sup>483</sup> DHS Petition at 2.

<sup>484</sup> See *Foreign Participation Order*, 12 FCC Rcd at 23919-21 ¶¶ 61-66.

Executive Branch.<sup>485</sup> We conclude that adoption of the network security condition sought by DHS addresses these concerns.<sup>486</sup> In accordance with the request of DHS, in the absence of any objection from the Applicants, and given the discussion above, we condition our grant of the RCC applications and associated petitions for declaratory ruling on compliance by Verizon Wireless with the commitments set forth in the March 27, 2008 Letter. We include the DHS Petition, which attaches the March 27, 2008 Letter, as Appendix C to this Memorandum Opinion and Order and Declaratory Ruling.

## IX. CONCLUSION

155. We find that competitive harm is unlikely in most mobile telephony markets as a result of this transaction. As discussed above, however, with regard to six local mobile telephony markets, our market-by-market analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm.

## X. ORDERING CLAUSES

156. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(b), 310(d), the applications for the transfer of control of licenses from Rural Cellular Corporation to Cellco Partnership d/b/a Verizon Wireless are GRANTED, to the extent specified in this Memorandum Opinion and Order and Declaratory Ruling and subject to the conditions specified herein.

157. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.24 of the Commission's rules, 47 C.F.R. § 63.24, the application to transfer control of international section 214 authorizations from Rural Cellular Corporation to Cellco Partnership d/b/a Verizon Wireless are GRANTED.

158. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from Rural Cellular Corporation to Cellco Partnership d/b/a Verizon Wireless is conditioned upon the completion of the divestitures described in Part V of this Memorandum Opinion and Order and Declaratory Ruling.

159. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(b) and (d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 309, 310(b), 310(d), the Petition to Adopt Conditions to Authorizations and Licenses filed by the U.S. Department of Homeland Security and U.S. Department of Justice on April 2, 2008, IS GRANTED. Grant of the transfer of control applications and associated petitions for declaratory ruling filed jointly by Verizon Wireless and RCC and its subsidiaries IS CONDITIONED UPON compliance by Verizon Wireless with the terms contained in the March 27, 2008 Letter to Stewart Baker, Assistant Secretary of Policy, U.S. Department of Homeland Security, attached to this Memorandum Opinion and Order and Declaratory Ruling as Appendix C.

160. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses from Rural Cellular Corporation to Cellco Partnership d/b/a Verizon Wireless filed by Vermont Department of Public Service and the Consumer Federation of America, Consumers Union, Free Press, U.S. Public Interest Research Group and Vermont PIRG are DENIED and GRANTED IN PART for the reasons stated herein.

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<sup>485</sup> *Id.* at 23919 ¶ 62.

<sup>486</sup> *See infra* ¶ 159.

161. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition for Reconsideration of the decision of the Wireless Telecommunications Bureau to extend the petition to deny deadline by 90 days is DISMISSED as moot.

162. IT IS FURTHER ORDERED that the above grant shall include authority for Cellco Partnership d/b/a Verizon Wireless to acquire control of: (a) any license or authorization issued to RCC and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licenses after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

163. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling SHALL BE EFFECTIVE upon adoption. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Markets Identified by the Initial Screen

## CEAs:

CEA	Name
CEA0160	Albany-Schenectady-Troy, NY
CEA0450	Anniston, AL
CEA0520	Atlanta, GA-AL-NC
CEA0733	Bangor, ME
CEA1000	Birmingham, AL
CEA1080	Boise City, ID-OR
CEA1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-R
CEA1303	Burlington, VT-NY
CEA1800	Columbus, GA-AL
CEA2080	Denver, CO-KS-NE
CEA2180	Dothan, AL-FL-GA
CEA2240	Duluth-Superior, MN-WI
CEA2400	Eugene-Springfield, OR-CA
CEA2520	Fargo-Moorhead, ND-MN
CEA2985	Grand Forks, ND-MN
CEA3560	Jackson, MS-LA
CEA4243	Lewiston-Auburn, ME
CEA4920	Memphis, TN-AR-MS-KY
CEA5120	Minneapolis-St. Paul, MN-WI
CEA5240	Montgomery, AL
CEA6323	Pittsfield, MA-VT
CEA6403	Portland, ME
CEA6440	Portland-Vancouver, OR-WA
CEA6690	Redding, CA-OR
CEA6740	Richland-Kennewick-Pasco, WA
CEA6980	St. Cloud, MN
CEA7080	Salem, OR
CEA7760	Sioux Falls, SD-IA-MN-NE
CEA7840	Spokane, WA-ID
CEA8003	Springfield, MA
CEA8600	Tuscaloosa, AL
CEA9040	Wichita, KS-OK
CEA9260	Yakima, WA
CEA9527	Tupelo, MS-AL-TN
CEA9537	Lebanon, NH-VT
CEA9550	Pendleton, OR-WA
CEA9555	Watertown, SD-MN

**CMAAs:**

<b>CMA</b>	<b>Name</b>
CMA141	Duluth, MN-WI
CMA156	Portsmouth-Dover-Rochester, NH
CMA221	Fargo-Moorehead, ND-MN
CMA224	Bangor, ME
CMA248	Burlington, VT
CMA267	Sioux Falls, SD
CMA276	Grand Forks, ND-MN
CMA279	Lewiston-Auburn, ME
CMA465	Maine 3 - Kennebec
CMA548	New Hampshire 1 - Coos
CMA560	New York 2 - Franklin
CMA608	Oregon 3 - Umatilla
CMA679	Vermont 1 - Franklin
CMA680	Vermont 2 - Addison
CMA694	Washington 2 - Okanogan
CMA695	Washington 3 - Ferry
CMA700	Washington 8 - Whitman

**APPENDIX B**

**Market-Specific Analysis of Markets Involving Divestiture**

**VERIZON/RCC****ANALYSIS OF MARKETS (CMAs)  
INVOLVING DIVESTITURE**

Set forth below is a detailed examination of each of the Cellular Market Areas (“CMAs”) in which it is likely that there would be competitive harms as a result of this transaction if Verizon Wireless and Rural Cellular Corporation (“RCC”) were permitted to combine their holdings in these CMAs. The initial three-part screen that we apply – two parts of which utilize the Herfindahl-Hirschman Index (“HHI”) to measure market concentration, and the other of which focuses on spectrum aggregation – is designed to be conservative and to ensure that we do not exclude from further scrutiny any geographic areas in which the potential for anticompetitive effects exists. In applying the initial screen, we find that each of these CMAs is flagged by our HHI initial screens, while none of the CMAs is flagged by the 95 megahertz spectrum aggregation screen.

The market share and HHI information appearing herein are derived from our analysis of three sets of data: data compiled in our Numbering Resource Utilization / Forecast (“NRUF”) database, geographic service provision data, and Local Number Portability (“LNP”) data. Using these different sets of data to cross-check against each other, we find that these data corroborate each other. As part of our multi-factor, market-specific analysis, we have a reliable basis for drawing competition-related conclusions based on the totality of the circumstances that are present in a given market.

The initial screen is only the beginning of our analysis of each of these CMAs discussed below. The screen does not by itself provide a basis for concluding that the proposed transfer of control would likely lead to anticompetitive harms. As discussed below, after considering the potential impact of combining Verizon Wireless and RCC, we determine that the transfer of control of licenses held by RCC to Verizon Wireless in each of these CMAs would likely lead to anticompetitive harms, and we conclude that the public interest will not be served by this transaction absent full business unit divestitures relating to these CMAs.

**Burlington, VT (CMA248)**Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, Personal Communication Services (“PCS”), Specialized Mobile Radio (“SMR”), and 700 MHz spectrum holdings in this market. Verizon Wireless holds 40 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>487</sup> on a county-by-county basis, in the Burlington CMA. RCC holds 38.2

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<sup>487</sup> This analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73, some of which remain subject to review in the long-form application process and some of which have already been granted. See “Wireless Telecommunications Bureau Grants 700 MHz Band Licenses,” *Public Notice*, DA 08-1522 (WTB rel. June 26, 2008).

megahertz<sup>488</sup> of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. Thus, the merged entity would hold 78.2 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the Burlington CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

#### Further Market-Specific Analysis

*Actual Competitors in the Market.* The Burlington, Vermont CMA has a population of about 153,472, and is comprised of two counties. In this CMA, there are three wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

Service Provider	Market Share
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
Sprint Nextel	[REDACTED]
U.S. Cellular	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from three to two, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered.<sup>489</sup> The table below provides the portion of the CMA land area and population covered by each service provider in the Burlington CMA.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	74	99
RCC	100	100
Sprint Nextel	80	91
U.S. Cellular	36	75

In the Burlington CMA, Verizon Wireless, RCC, Sprint Nextel, and U.S. Cellular each cover 70 percent or greater of the population, which we have considered to be sufficient,<sup>490</sup> and Verizon Wireless, RCC, and Sprint Nextel all cover over 50 percent of the CMA area.

<sup>488</sup> RCC's spectrum holdings include 3.2 megahertz of spectrum RCC is leasing from AT&T through a spectrum manager leasing arrangement that expires on May 1, 2010.

<sup>489</sup> American Roamer provides data on network deployment by service provider. Combining American Roamer data with Census Bureau data provides the percent of land area and population covered within a CMA.

<sup>490</sup> See Applications of AT&T Inc. and Dobson Communications Corporation for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20324 n.170 (2007).

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either Advanced Wireless Services (“AWS-1”) or Broadband Radio Services (“BRS”) spectrum is available in this CMA. With regard to the AWS-1 spectrum, it does not appear that there is any required relocation of transmitters or receivers by government users in the CMA.<sup>491</sup> As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees and is included in the analysis of the competitive effects of this transaction for this CMA. Verizon Wireless holds 20 megahertz of AWS-1 spectrum throughout the CMA. With regard to BRS spectrum, a transition plan has not been filed for the Basic Trading Areas (“BTA”) that coincides with this CMA. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

Thus, in sum, if all relevant spectrum holdings in this CMA were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 98.2 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum available for mobile telephony services within the Burlington, Vermont CMA, reflecting approximately 27 percent of this spectrum.

The table below provides the spectrum holdings associated with the 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 mobile telephone spectrum available in this CMA. In addition to the merged entity, eight other licensees would hold spectrum throughout the entire CMA.

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<sup>491</sup> See <<http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>> (providing information on AWS relocation, including a relocation schedule and cost summary for AWS-1 relocation).

Licensees with Coverage of Entire CMA	Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, 700 MHz, and AWS-1)
Verizon Wireless	60
RCC	38.2
<i>If combined</i>	98.2
AT&T	35
MetroPCS	10
Qualcomm	6
SpectrumCo.	20
Sprint Nextel	55
T-Mobile	30
U.S. Cellular	10
Vermont Telephone	12

### Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. If a divestiture in this CMA were not required, there would be only two facilities-based providers (the merged entity and Sprint Nextel) that have market share greater than [REDACTED] percent providing service in this CMA. Further, the transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be more than [REDACTED] times as large as the one other service provider in the CMA that has a market share greater than [REDACTED] percent. Given that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. Under these circumstances, we find that network coverage by U.S. Cellular of 75 percent of the population with 10 megahertz of spectrum when it does not have [REDACTED] percent or greater market share not to be a sufficient countervailing factor. Further, the LNP data do not indicate that customers in this CMA have switched from any of the service providers with a greater than [REDACTED] percent market share to U.S. Cellular, despite its sufficient population coverage. As a result, we find that there would be a significant increase in the probability that the merged entity would be able to behave in an anticompetitive manner. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

### **New York 2- Franklin (CMA560)**

#### Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, PCS, SMR, and 700 MHz spectrum holdings in this market. Verizon Wireless holds

35 to 45 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>492</sup> on a county-by-county basis, in the CMA. RCC holds 25 to 37.5 megahertz<sup>493</sup> of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. The merged entity would hold 65 to 80 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

#### Further Market-Specific Analysis

*Actual Competitors in the Market.* The New York 2- Franklin CMA has a population of about 230,331 and is comprised of five counties. In this CMA, there are four wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

Service Provider	Market Share
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
AT&T	[REDACTED]
Sprint Nextel	[REDACTED]
T-Mobile	[REDACTED]
U.S. Cellular	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from four to three, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered. The table below provides the portion of the CMA land area and population covered by each service provider in the New York 2-Franklin CMA.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	45	89
RCC	54	90
AT&T	10	31
Sprint Nextel	19	62
T-Mobile	0.1	0.3
U.S. Cellular	0.2	0.1

<sup>492</sup> As previously noted, this analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73.

<sup>493</sup> RCC's spectrum holdings include 2.5 megahertz of spectrum RCC is leasing from PCS Wireless in Clinton and Essex counties through a spectrum manager leasing arrangement, with an expiration date of September 21, 2011.

In the New York 2- Franklin CMA, only Verizon Wireless and RCC cover 70 percent or greater of the population, which we have considered to be sufficient, and only RCC covers over 50 percent of the CMA land area.

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to T-Mobile (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] ports were to AT&T (reflecting less than [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to T-Mobile (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either AWS-1 or BRS spectrum is available in this CMA. With regard to AWS-1 spectrum, it does not appear that there is required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees and is included in the analysis of the competitive effects of this transaction for this CMA. Verizon Wireless holds 20 megahertz of AWS-1 spectrum throughout the CMA. With regard to BRS spectrum, a transition plan has been filed for one of the three BTAs that coincide with this CMA. However, a completion notification has not been filed. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

Thus, in summary, if all relevant spectrum holdings were combined in this CMA, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 85 to 100 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz and AWS-1 spectrum available for mobile telephony services within the New York 2-Franklin CMA, reflecting approximately 23 to 27 percent of this spectrum.

The table below provides the spectrum holdings associated with the 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 mobile telephony spectrum available in this CMA. In addition to the merged entity, seven other licensees in addition to the merged entity would hold spectrum throughout the entire CMA.

<b>Licensees with Coverage of Entire CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, 700 MHz, and AWS-1)</b>
Verizon Wireless	55-65
RCC	25-37.5
<i>If combined</i>	<i>85-100</i>
AT&T	40-60
MetroPCS	10
Qualcomm	6
SpectrumCo.	20
Sprint Nextel	55 -58.25
T-Mobile	30-40
Westelcom	12

Further, six licensees hold spectrum in parts of this CMA.

<b>Licensees with Partial Coverage of CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, 700 MHz, and AWS-1)</b>
LCFR	10
MCG PCS	15
New Dimension	10
NextWave	10
PCS Partners	10
Vermont Telephone	10

### Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. If a divestiture in this CMA were not required, there would be only one facilities-based provider (the merged entity) that would be considered sufficiently built out in this CMA.<sup>494</sup> The transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be approximately [REDACTED] to [REDACTED] times as large as the other service providers in the CMA that have a market share greater than [REDACTED] percent. Further, this transaction would reduce the number of service providers to three with market share greater than [REDACTED] percent. Given that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. As a result, there would be a significant increase in the probability that the merged entity would behave in an anticompetitive manner. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

<sup>494</sup> For purposes of this determination, we define sufficiently built-out as having coverage of at least 70 percent of the population in the CMA.

## Vermont 1- Franklin (CMA679)

### Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, PCS, SMR, and 700 MHz spectrum holdings in this market. Verizon Wireless holds 40 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>495</sup> on a county-by-county basis, in the CMA. RCC holds 38.2<sup>496</sup> megahertz of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. Thus, the merged entity would hold 78.2 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

### Further Market-Specific Analysis

*Actual Competitors in the Market.* The Vermont 1- Franklin CMA has a population of about 217,353, and is comprised of seven counties. In this CMA, there are three wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

Service Provider	Market Share
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
Sprint Nextel	[REDACTED]
U.S. Cellular	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from three to two, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered. The table below provides the portion of the CMA land area and population covered by each service provider in the Vermont 1-Franklin CMA.

<sup>495</sup> As previously noted, this analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73.

<sup>496</sup> RCC's spectrum holdings include 3.2 megahertz of spectrum from AT&T throughout the CMA. This spectrum manager lease expires in March 2012.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	71	86
RCC	86	94
Sprint Nextel	23	48
U.S. Cellular	35	42

In the Vermont 1-Franklin CMA, only Verizon Wireless and RCC cover 70 percent or greater of the population, which we have considered to be sufficient, and only Verizon Wireless and RCC cover over 50 percent of the CMA land area.

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] of these ports were to U.S. Cellular (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either AWS-1 or BRS spectrum is available in this CMA. With regard to AWS-1 spectrum, it does not appear that there is required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees and is included in the analysis of the competitive effects of this transaction for this CMA. Verizon Wireless holds 20 megahertz of AWS-1 spectrum throughout the CMA. With regard to BRS spectrum, a transition plan has not been filed for the BTA that coincides with this CMA; therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

Thus, in summary, if all relevant spectrum holdings were combined in this CMA, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 98.2 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz and AWS-1 spectrum available for mobile telephony services within the Vermont 1-Franklin CMA, reflecting approximately 27 percent of this spectrum.

The table below provides the spectrum holdings associated with the 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 mobile telephony spectrum available in this CMA. In addition to the merged entity, nine other licensees would hold spectrum throughout the entire CMA.

<b>Licensees with Coverage of Entire CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, 700 MHz, and AWS-1)</b>
Verizon Wireless	60
RCC	38.2
<i>If combined</i>	98.2
AT&T	35-45
MetroPCS	10
NextWave	10
Qualcomm	6
SpectrumCo.	20
Sprint Nextel	54.5-56
T-Mobile	30
U.S. Cellular	10
Vermont Telephone	12-22

### Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. If a divestiture in this CMA were not required, there would be only one facilities-based provider (the merged entity) that would be considered sufficiently built out in this CMA.<sup>497</sup> The transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be approximately [REDACTED] times as large as the one other service provider in the CMA that has a market share greater than [REDACTED] percent. Further, this transaction would reduce the number of service providers to two with market share greater than [REDACTED] percent. The LNP data indicates that Verizon Wireless customers [REDACTED], therefore limiting consumer choice if the merged entity were to behave in an anticompetitive manner. Given that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. As a result, there would be a significant increase in the probability that the merged entity would behave in an anticompetitive manner. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

### **Vermont 2- Addison (CMA680)**

#### Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

<sup>497</sup> As previously stated, for purposes of this determination, we define sufficiently built-out as having coverage of at least 70 percent of the population in the CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, PCS, SMR, and 700 MHz spectrum holdings in this market. Verizon Wireless holds 15 to 40 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>498</sup> on a county-by-county basis, in the CMA. RCC holds 35 to 45 megahertz<sup>499</sup> of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. Thus, the merged entity would hold 55 to 85 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

#### Further Market-Specific Analysis

*Actual Competitors in the Market.* The Vermont 2- Addison CMA has a population of about 238,002, and is comprised of five counties. In this CMA, there are four wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

<b>Service Provider</b>	<b>Market Share</b>
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
AT&T	[REDACTED]
Sprint Nextel	[REDACTED]
T-Mobile	[REDACTED]
U.S. Cellular	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from four to three, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered. The table below provides the portion of the CMA land area and population covered by each service provider in the Vermont 2-Addison CMA.

<sup>498</sup> As previously noted, this analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73.

<sup>499</sup> RCC spectrum holdings include 10 megahertz of spectrum RCC is leasing from AT&T in Bennington and Rutland counties as well as 3.2 megahertz of spectrum from AT&T in Addison County. Both leases are spectrum manager leases and the 10 megahertz lease expires in April 2017 and the 3.2 megahertz lease expires in March 2012.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	43	53
RCC	92	97
AT&T	3	6
Sprint Nextel	49	71
T-Mobile	0.1	0.2
U.S. Cellular	63	71

In the Vermont 2-Addison CMA, RCC, Sprint Nextel and U.S. Cellular each cover 70 percent or greater of the population, which we have considered to be sufficient, and RCC and U.S. Cellular both cover over 50 percent of the CMA land area.

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to T-Mobile (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] ports were to U.S. Cellular (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to T-Mobile (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] ports were to U.S. Cellular (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either AWS-1 or BRS spectrum is available in this CMA. With regard to AWS-1 spectrum, it does not appear that there is required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is available for deployment by commercial licensees and is included in the analysis of the competitive effects of this transaction for this CMA. Verizon Wireless holds 20 megahertz of AWS-1 spectrum throughout the CMA. With regard to BRS spectrum, a transition plan has not been filed for the BTA that coincides with this CMA. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

Thus, in summary, if all relevant spectrum holdings were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 75 to 105 megahertz of a total of 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum available for mobile telephony services within the Vermont 2-Addison CMA, reflecting approximately 20 to 28 percent of this spectrum.

The table below provides the spectrum holdings associated with the 370 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 mobile telephony spectrum available in this CMA. In addition to the

merged entity, nine other licensees in addition to the merged entity would hold spectrum throughout the entire CMA.

<b>Licensees with Coverage of Entire CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, 700 MHz, and AWS-1)</b>
Verizon Wireless	35-60
RCC	35-45
<i>If combined</i>	<i>70-95</i>
AT&T	20-40
MetroPCS	10-20
NextWave	20
Qualcomm	6
SpectrumCo.	20
Sprint Nextel	56-56.25
T-Mobile	30-40
U.S. Cellular	10-35
Vermont Telephone	12-22

Further, one additional licensee, Northcoast, holds 15 megahertz of cellular, PCS, SMR, 700 MHz, and AWS-1 spectrum in parts of this CMA.

### Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. The transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be approximately [REDACTED] to [REDACTED] times as large as the two other service providers in the CMA that have a market share greater than [REDACTED] percent. The LNP data indicates that Verizon Wireless customers [REDACTED], therefore limiting consumer choice if the merged entity were to behave in an anticompetitive manner. Given that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. As a result, there would be a significant increase in the probability that the merged entity would behave in an anticompetitive manner. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

### **Washington 2- Okanogan (CMA694)**

#### Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, PCS, SMR, and 700 MHz spectrum holdings in this market. Verizon Wireless holds

55 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>500</sup> on a county-by-county basis, in the CMA. RCC holds 35 megahertz of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. Thus, the merged entity would hold 90 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

#### Further Market-Specific Analysis

*Actual Competitors in the Market.* The Washington 2- Okanogan CMA has a population of about 138,783, and is comprised of three counties. In this CMA, there are five wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

Service Provider	Market Share
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
AT&T	[REDACTED]
Inland Cellular	[REDACTED]
Sprint Nextel	[REDACTED]
T-Mobile	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from five to four, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered. The table below provides the portion of the CMA land area and population covered by each service provider in the Washington 2-Okanogan CMA.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	29	87
RCC	68	99
AT&T	11	64
Inland Cellular	0	0
Sprint Nextel	9	68
T-Mobile	10	66

In the Washington 2-Okanogan CMA, only Verizon Wireless and RCC cover 70 percent or greater of the population, which we have considered to be sufficient, and only RCC covers over 50 percent of the CMA land area.

<sup>500</sup> As previously noted, this analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73.

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Inland Cellular (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] ports were to T-Mobile (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Inland Cellular (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] ports were to T-Mobile (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either AWS-1 or BRS spectrum is available in this CMA. With regard to AWS-1 spectrum, it appears that there is required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is not available for deployment by commercial licensees and is not included in the analysis of the competitive effects of this transaction for this CMA. With regard to BRS spectrum, a transition plan has been filed for the BTA that coincides with this CMA. However, a completion notification has not been filed. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

In summary, if the spectrum holdings were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 90 megahertz of a total of 280 megahertz of cellular, PCS, SMR, and 700 MHz spectrum available for mobile telephony services within the Washington 2-Okanogan CMA, reflecting approximately 32 percent of this spectrum.

The table below provides the spectrum holdings associated with the 280 megahertz of cellular, PCS, SMR, and 700 MHz mobile telephony spectrum available in this CMA. In addition to the merged entity, five other licensees in addition to the merged entity would hold spectrum throughout the entire CMA.

<b>Licensees with Coverage of Entire CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, and 700 MHz)</b>
Verizon Wireless	55
RCC	35
<i>If combined</i>	90
AT&T	35
Qualcomm	6
Sprint Nextel	56-58.50
T-Mobile	15
Vulcan	12

## Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. The transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be approximately [REDACTED] to [REDACTED] times as large as the other service providers in the CMA with a market share greater than [REDACTED] percent. Further, it would combine the two providers with the best coverage in terms of land area and population, therefore strengthening the merged entity. Combined with the fact that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. As a result, there would be a significant increase in the probability that the merged entity would behave in an anticompetitive manner. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

### **Washington 3- Ferry (CMA695)**

#### Initial Screen

*HHI Analysis.* The post-merger HHI in the CMA would be [REDACTED], an increase of [REDACTED] from the current figure. Because these numbers are sufficient to flag this CMA under both HHI portions of the initial screen, they indicate a need for a market-specific analysis based on a potential for competitive harms to arise in this CMA.

*Spectrum Aggregation.* Under the initial 95 megahertz spectrum aggregation screen, we first examine the cellular, PCS, SMR, and 700 MHz spectrum holdings in this market. Verizon Wireless holds 45 megahertz of cellular, PCS, SMR, and 700 MHz spectrum,<sup>501</sup> on a county-by-county basis, in the CMA. RCC holds 35 megahertz of cellular, PCS, SMR, and 700 MHz spectrum on a county-by-county basis in this CMA. Thus, the merged entity would hold 80 megahertz of cellular, PCS, SMR, and 700 MHz spectrum, on a county-by-county basis, within the CMA. Accordingly, this market is not flagged by the 95 megahertz spectrum aggregation screen.

#### Further Market-Specific Analysis

*Actual Competitors in the Market.* The Washington 3- Ferry CMA has a population of about 59,058, and is comprised of three counties. In this CMA, there are three wireless service providers with market share greater than [REDACTED] percent, which is the standard we have used in recent wireless transaction orders to identify service providers with sufficient share to be counted as actual competitors in the market.

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<sup>501</sup> As previously noted, this analysis does not include spectrum associated with the 700 MHz licenses auctioned in Auction 73.

Service Provider	Market Share
Verizon Wireless	[REDACTED]
RCC	[REDACTED]
<i>If combined</i>	[REDACTED]
AT&T	[REDACTED]
Leap	[REDACTED]
Sprint Nextel	[REDACTED]
T-Mobile	[REDACTED]

Thus, if Verizon Wireless and RCC were combined in this market, the number of actual competitors would be reduced from three to two, with the combined entity holding [REDACTED] market share in this CMA.

*Coverage of Existing Networks.* We also consider each of the Applicants', as well as the other service providers', respective network coverage in this market of concern based on the percent of land area and population covered. The table below provides the portion of the CMA land area and population covered by each service provider in the Washington 3-Ferry CMA.

Service Provider	Percent of Area Covered	Percent of Population Covered
Verizon Wireless	34	70
RCC	87	99
AT&T	24	67
Leap	0.3	7
Sprint Nextel	5	32
T-Mobile	5	21

In the Washington 3-Ferry CMA, only Verizon Wireless and RCC cover 70 percent or greater of the population, which we have considered to be sufficient, and only RCC covers over 50 percent of the CMA land area.

*Substitutability.* We also analyzed wireless LNP data to gauge how consumers view the substitutability of Verizon Wireless and RCC. Verizon Wireless had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] of these ports were to RCC (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Leap (reflecting [REDACTED] percent of Verizon Wireless's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of Verizon Wireless's ports); and [REDACTED] ports were to T-Mobile (reflecting [REDACTED] percent of Verizon Wireless's ports).

RCC had a total of [REDACTED] mobile-to-mobile ports out through June 2007: [REDACTED] ports were to Verizon Wireless (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to AT&T (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Leap (reflecting [REDACTED] percent of RCC's ports); [REDACTED] of these ports were to Sprint Nextel (reflecting [REDACTED] percent of RCC's ports); and [REDACTED] ports were to T-Mobile (reflecting [REDACTED] percent of RCC's ports).

*Spectrum Aggregation.* At this step of the analysis, we examine whether – in addition to the cellular, SMR, PCS, and 700 MHz spectrum considered as part of the initial screen – either AWS-1 or BRS spectrum is available in this CMA. With regard to AWS-1 spectrum, it appears that there is required relocation of transmitters or receivers by government users in the CMA. As a result, AWS-1 spectrum in this CMA is not available for deployment by commercial licensees and is not included in the analysis of the competitive effects of this transaction for this CMA. With regard to BRS spectrum, a transition plan has been filed for the BTA that coincides with this CMA. However, a completion notification has not been filed. Therefore, BRS spectrum is not included in the analysis of the competitive effects of this transaction for this CMA.

In summary, if the spectrum holdings were combined, the merged entity's total spectrum aggregation on a county-by-county basis in this CMA would come to 80 megahertz of a total of 280 megahertz of cellular, PCS, SMR, and 700 MHz spectrum available for mobile telephony services within the Washington 2-Okanogan CMA, reflecting approximately 29 percent of this spectrum.

The table below provides the spectrum holdings associated with the 280 megahertz of cellular, PCS, SMR, and 700 MHz mobile telephony spectrum available in this CMA. In addition to the merged entity, six other licensees in addition to the merged entity would hold spectrum throughout the entire CMA.

<b>Licensees with Coverage of Entire CMA</b>	<b>Mobile Telephony Spectrum in Megahertz (Cellular, PCS, SMR, and 700 MHz)</b>
Verizon Wireless	45
RCC	35
<i>If combined</i>	<i>80</i>
AT&T	30
Leap	15
Qualcomm	6
Sprint Nextel	46
T-Mobile	15
Vulcan	12

### Conclusion

In order to ensure that there is an adequate number of competing service providers in this market, and in order to guard against the significant likelihood of competitive harm, we require a full business unit divestiture of certain assets in this CMA. The transaction would involve combining the [REDACTED] and [REDACTED] largest providers in terms of market share and the resulting entity would be approximately [REDACTED] times as large as the one other service provider in the CMA that has a market share greater than [REDACTED] percent. Further, it would combine two of the three providers with the best coverage in terms of land area and population, therefore strengthening the merged entity. Given that Verizon Wireless would have approximately [REDACTED] percent of the subscribers, we find it highly likely that Verizon Wireless would be able to profitably raise prices or lower the quality of wireless service. Therefore, on the basis of the record, we conclude that there is a substantial risk that the transaction, without a divestiture, would lead to anticompetitive harms in this CMA.

**APPENDIX C**

**Petition to Adopt Conditions to Authorizations and Licenses  
and Executive Branch Agreement**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In re Applications of	)	
	)	
RURAL CELLULAR CORP.,	)	
TRANSFEROR,	)	WT Docket No. 07-208
	)	
and	)	
	)	
CELLCO PARTNERSHIP D/B/A	)	
VERIZON WIRELESS, TRANSFEREE	)	
	)	
for Consent to the Transfer of Control of	)	
Commission Licenses and Authorizations	)	
Pursuant to Sections 214 and 310(d) of the	)	
Communications Act	)	

**PETITION TO ADOPT CONDITIONS TO  
 AUTHORIZATIONS AND LICENSES**

Pursuant to Section 1.41 of the Federal Communications Commission's ("FCC" or "Commission") rules,<sup>1</sup> the Department of Homeland Security ("DHS") respectfully submits this Petition to Adopt Conditions to Authorizations and Licenses ("Petition"). Through this Petition, DHS advises the Commission that it has no objection to the Commission granting its consent in the above-referenced proceeding, provided that the Commission condition the grant on compliance by Cellco Partnership ("Cellco") with the terms contained in their March 27 letter to Stewart Baker (the "Letter") attached hereto as Exhibit 1.

In its application, Cellco acknowledged that the above-referenced proceeding is governed by the terms of the December 14, 1999 Agreement between Cellco and its parent corporations on one hand, and the U.S. Department of Justice ("DOJ"), U.S. Department of Defense ("DOD"),

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<sup>1</sup> 47 C.F.R. § 1.41.

and Federal Bureau of Investigation ("FBI") on the other. The attached Letter incorporates the terms of the December 14, 1999 Agreement by reference and creates a new agreement by Cellco and its parent corporations to confer upon DHS identical rights and benefits conferred to DOJ, DOD and FBI, and as such, DHS shall conduct itself as a U.S. government party under that Agreement. This Petition is submitted by DHS in consideration of the agreements made in the attached Letter.

As the Commission is aware, DHS has taken the position that its ability to satisfy its obligations to protect the national security, enforce the laws, and preserve the safety of the public could be impaired by transactions in which foreign entities will own or operate a part of the U.S. telecommunications system, or in which foreign-located facilities will be used to provide domestic telecommunications services to U.S. customers. DHS has concluded that the commitments set forth in the Letter will help ensure that DHS and other entities with responsibility for enforcing the law, protecting the national security, and preserving public safety can proceed in a legal, secure, and confidential manner to satisfy these responsibilities.

Accordingly, DHS, with the concurrence of DOJ and FBI, advises the Commission that it hereby withdraws its request to defer action of November 9, 2007, and that it has no objection to the Commission granting the above-referenced application, provided that the Commission conditions its consent on Cellco Partnership's compliance with the commitments set forth in the Letter.

Respectfully submitted,

/s/ Charles M. Steele

Charles M. Steele  
Chief of Staff  
National Security Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

/s/ Stewart A. Baker

Stewart A. Baker  
Assistant Secretary for Policy  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, DC 20528

April 2, 2008

**Exhibit 1**

Steven E. Zipperstein  
General Counsel

March 27, 2008

**BY E-MAIL**

Mr. Stewart Baker  
Assistant Secretary of Policy  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528

Re: New Agreement to Confer on the U.S. Department of Homeland Security Identical Rights and Benefits as Obligated to other U.S. Government Agencies in the 1999 National Security Agreement

Dear Mr. Baker:

Verizon Communications Inc. ("Verizon"), a Delaware corporation, Vodafone Group Plc ("Vodafone"), a United Kingdom public limited company, and Cellco Partnership d/b/a Verizon Wireless ("Cellco Partnership" or "Verizon Wireless"), a Delaware corporation, hereby agree to confer on the U.S. Department of Homeland Security ("DHS") the same rights and benefits accorded to the U.S. government agencies in the Agreement, as amended, dated December 14, 1999 between Bell Atlantic Corporation ("Bell Atlantic"), Vodafone and Cellco Partnership, on the one hand, and the U.S. Department of Defense ("DOD"), the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") on the other (the "1999 Agreement").

In April 2000, Vodafone and Bell Atlantic Corp. entered into a joint venture, known as Cellco Partnership, effectively combining their respective U.S. wireless networks. In June 2000, Verizon became the successor in interest to Bell Atlantic. Verizon currently owns a controlling 55% interest in Verizon Wireless, and Vodafone indirectly owns the remaining 45% interest through two of its indirect, wholly-owned American subsidiaries.

Recognizing that the *Homeland Security Act of 2002* grants DHS non-exclusive but prominent authority within the Executive Branch over U.S. national security and public safety, Verizon, Vodafone and Verizon Wireless agree that DHS should be accorded identical rights and benefits given to DOD, DOJ and the FBI in the 1999 Agreement. By its terms, the 1999 Agreement intends to ensure the security of the U.S. telecommunications system, an essential component of U.S. national security and public safety, and therefore, the 1999 Agreement is within DHS' purview.



Verizon Wireless  
One Verizon Way  
VC43E024  
Basking Ridge, NJ 07920-1097


Phone 908 559-7390  
Fax 908 559-7397  
steven.zipperstein@VerizonWireless.com

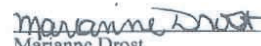
This letter does not constitute a modification, assignment, delegation or novation of any of the original parties' rights and duties. Rather, this letter creates an agreement on the part of Verizon, Vodafone and Cellco Partnership to vest DHS with the same rights and benefits accorded to DOD, DOJ and FBI under the 1999 Agreement, and as that Agreement may be amended by those parties. Accordingly, the terms of the 1999 Agreement, as amended, are hereby incorporated by reference, and are effective as if DHS were an original party-beneficiary to that Agreement.

Verizon, Vodafone and Verizon Wireless consider themselves to be in full compliance with the 1999 Agreement. Verizon Wireless will copy all future notices required under the 1999 Agreement, as amended, to DOJ, DOD and the FBI, adding DHS as an additional recipient. As per instructions from DHS, Verizon Wireless will send any notices by one or more methods to the following contact point:

U.S. Department of Homeland Security  
Assistant Secretary for Policy  
ATTN: Office of Foreign Finance and Investment Policy  
3801 Nebraska Avenue NW  
Washington, DC 20528  
[ip-fcc@dhs.gov](mailto:ip-fcc@dhs.gov)

Sincerely,

  
\_\_\_\_\_  
Steven E. Zipperstein  
Cellco Partnership d/b/a Verizon Wireless

  
\_\_\_\_\_  
Marianne Drost  
Verizon Communications Inc.

  
\_\_\_\_\_  
Stephen Scott  
Vodafone Group Plc

cc:  
Joanne Ongman, U.S. Department of Justice  
Jon Pifer, Federal Bureau of Investigation  
Hillary Morgan, U.S. Department of Defense (DISA)

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
APPROVING IN PART, DISSENTING IN PART**

*Re: Applications of Cellco Partnership d/b/a Verizon Wireless and Rural Cellular Corporation for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases.*

Today's item permits Verizon Wireless to acquire Rural Cellular Corporation (RCC) subject to the divestiture of customers, facilities, and spectrum in several markets across the country. While I am always troubled by additional concentration in the wireless marketplace, these divestitures will improve competition in the affected areas (as compared to an unconditioned merger) and I am glad we require them. I think it is particularly important that Verizon will divest all of RCC's spectrum, facilities and customers in Vermont to the nation's largest GSM carrier—it will ensure that native Vermonters and visitors to the state who happen to have GSM phones will continue to be able use their handsets. I applaud the hard work of Senator Sanders and other members of the Vermont delegation, as well as of Vermont's state agencies, in focusing the Commission's attention on this issue. I also hope that the ongoing discussions between the Vermont Telecommunications Authority and Verizon about expanding coverage in the state will continue in good faith and will ultimately prove fruitful. The public-private partnership that VTA has proposed could prove to be a critically important model for how to expand wireless coverage in rural areas. I, for one, will be watching its progress closely.

I dissent, however, to the portion of the item that includes the 700 MHz spectrum band in calculating the spectrum screen used in this transaction. The licenses won in our auction earlier this year will not even be available for use until February 2009 and it may be several years before it is ever used commercially by a majority of licensees. As I have explained in earlier statements, we have already been cavalier in applying this altered spectrum screen to prior transactions and we ought not put the cart before the horse yet again in an effort to encourage still more consolidation in the wireless industry.

I do wish, however, to express gratitude to my colleagues for their willingness to ensure that today's Order does not unnecessarily prejudge spectrum cap calculations in future transactions. In the years ahead, we will certainly need to consider the appropriate time and manner to account for certain spectrum bands that, like the 700 MHz band, are being transitioned into uses that include CMRS. But we must conduct this inquiry in a reasonable, careful and systematic manner, and I look forward to working with my colleagues on this important topic.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
APPROVING IN PART, CONCURRING IN PART**

*Re: Applications of Verizon Wireless and Rural Cellular Corporation for Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager Leases, WT Docket No. 07-208*

In reviewing any merger, it is our obligation, consistent with Sections 214(a) and 310(d) of the Act, to analyze the record evidence and determine whether the public will be served better by the transaction being approved or being denied, and what conditions, if any, may be necessary to mitigate harms to consumers. I approve this merger generally because in this the item the Commission recognizes the potential for harm in six markets, including in rural areas of Vermont, and requires divestitures of licenses and operational network assets in those markets. This is critical since our market by market analysis unveiled high market shares for the merged entity in these mostly smaller markets and few competing service providers with sufficient network assets or spectrum to deflect anticompetitive behavior by the newly merged entity.

I do believe the increase and enhancement of wireless services that will be offered to many of our nation's rural consumers and small businesses as a result of this transaction is beneficial to the public. Verizon Wireless expects to increase wireless broadband deployment in many markets and offer more choices in service plans and devices to consumers, as well as increase its geographic coverage. I expect that the savings from greater efficiencies of scale can be passed on to consumers.

I continue to have concerns, however, regarding the inclusion of the 80 MHz of the 698-806 MHz spectrum band in the total amount of spectrum suitable for mobile telephony nationwide. As I have cautioned before, the premature inclusion of this spectrum as part of our evaluation of the input market for spectrum and the potential competitive harms raises concerns regarding increased likelihood of competitive harm in certain overlapping markets. And with even more mergers on the horizon, we must be vigilant so as to protect consumers and ensure that the wireless market continues to be competitive.

I also share many of the concerns of Senator Bernie Sanders regarding increased consolidation in the wireless industry and the need for continued buildout to benefit the citizens of Vermont and in rural America generally. The lack of reliable wireless service in many of our rural areas stunts economic growth and the capabilities of first responders. It is incumbent upon this Commission to examine ways to accelerate buildout in rural America.

For these reasons, I approve in part and concur in part.